86-489

Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

W. T. LANGLEY AND MARY ANN GRIMES LANGLEY,
PETITIONERS

VERSUS

FEDERAL DEPOSIT INSURANCE CORPORATION,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

Whether the statutory language of 12 U. S. C. 1823(e) barring oral agreements between an obligor and a failed bank from being asserted as a defense against a suit on a promissory note by the Federal Deposit Insurance Corporation encompasses situations where the makers of the note assert fraud in the inducement of the underlying obligation.

PARTIES TO THE PROCEEDINGS

Federal Deposit Insurance Corporation (as successor to Planters Trust and Savings Bank)

W. T. Langley

Mary Ann Grimes Langley

Roy E. Caughfield

Federal Land Bank of Jackson

Elmer Landry

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioners, W. T. Langley and Mary Ann Grimes Langley (the "Langleys"), respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on June 25, 1986.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 792 F. 2d 541 (5th Cir. 1986). A copy of the opinion is attached hereto as Appendix A. The opinion of the United States District Court for the Western District of Louisiana granting respondent's motion for summary judgment is reported at 615 F. Supp. 749 (W. D. La. 1985) and a copy is attached hereto as Appendix B.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals for the Fifth Circuit was entered on June 25, 1986. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. 1254(1).

STATUTES INVOLVED

This case involves the interpretation of Section 2[13](3) of the Federal Deposit Insurance Act of 1950, as amended, codified as 12 U. S. C. 1823(e) as follows:

> "No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section, either as security for a

> loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank."

STATEMENT OF THE CASE

On October 3, 1980, a purchase agreement was entered into by W. T. Langley, a resident of Blytheville, Arkansas, and Leenerts Farms, Inc. ("Leenerts") for a farm containing "a total of 1,600 acres, more or less" in Pointe Coupee Parish, Louisiana, (hereinafter the "Melville Property"). The actual acquisition of the Melville property occurred on December 19, 1980. Financing for the purchase was provided to the Langleys by the Federal Land Bank in the amount of $1,350,000.00, secured by a first mortgage on the property and by Planters

Trust & Savings Bank ("Planters") in the amount of $450,000.00, secured by a second mortgage in the amount of $500,000.00 on the property. The balance owed on the Planters note, including interest, was renewed on January 27, 1982 and again on March 8, 1982. This latter note was sued upon by Planters in Louisiana state court in September, 1983. The Langleys removed this action to the United States District Court for the Western District of Louisiana on the basis of diversity jurisdiction. On October 18, 1983, the Langleys filed a complaint in the United States District Court for the Middle District of Louisiana, alleging a right to affirmative recovery from Planters and the other defendants therein in excess of $5,000,000.00. Subsequently, both actions were consolidated in the Western District of Louisiana. On October 5, 1984, four months after Planters was declared to be in an unsafe and unsound condition, the FDIC, was substituted as a party plaintiff in these

consolidated proceedings. On June 10, 1985, the FDIC in its capacity as receiver of Planters was substituted as a party defendant in the action filed by the Langleys. As the holder of the Langleys' note to Planters, the FDIC then moved for summary judgment. As a defense against the claims on the promissory notes by Planters and the Federal Land Bank ("FLB"), the Langleys allege in their action for affirmative recovery that Elmer Landry (formerly President of the Federal Land Bank Association of Opelousas) and Roy Caughfield (formerly President of Planters), both of whom are defendants in the District Court, fraudulently induced the Langleys to sign the Planters note and all preceding notes by certain statements, claims, representations, inducements, and omissions knowingly made by Caughfield and Landry, individually and on behalf of Planters and the FLB, respectively, regarding that which would be conveyed to the Langleys, the in rem nature

of the loan, the interst rate to be charged and the terms of the loan, as well as other misrepresentations more particularly within the knowledge of Caughfield and Landry. The Langleys allege that but for these misrepresentations, inducements, and omissions by Caughfield and Landry, individually and on behalf of Planters and the FLB, respectively, they would not have purchased the Melville property and signed the promissory notes herein sought to be enforced. Thus, the Langleys seek a declaration that the promissory notes and mortgages of Planters and the FLB are unenforceable, null and void for failure or want of cause and, alternatively, for error occurring as a result of the fraudulent misrepresentations, inducements, and omissions of the defendants or, in the further alternative, limiting enforcement of the notes and mortgages to the property itself.

Specifically, the Langleys allege that:

1.) Rather than the 1,628.4 acres represented orally, in the sale itself, and on a map prepared by or on behalf of the FLB, the Melville property consists of only 1,522 acres;

2.) Rather than receiving 400 mineral acres as was orally represented to the Langleys, only approximately 75 mineral acres was transferred;

3.) Caughfield, individually and on behalf of Planters, represented that no outstanding mineral leases burdened the property when in truth and fact, there existed an outstanding mineral lease held by Chevron, U.S.A. and, furthermore, the executive rights were held by another third party, John Barton; and

4.) The defendants engaged in a pattern of racketeering activity

> reprobated by 18 U.S.C. 1961, et seq., in that they have repeatedly used the United States mails and other interstate communications to further their fraudulent scheme which was designed to induce the Langleys to purchase the Melville property in order to rescue Planters from loans made to the prior owners of the Melville property which were in default (and who went bankrupt 3 months after the purchase), and to generate certain "fees" and "commissions" for Landry and Caughfield.

In answers to interrogatories, the Langleys have further asserted that Caughfield, individually and on behalf of Planters, made verbal representations in the presence of witnesses, on five or six occasions, that Leenerts owned 1,628.4 surface acres and 400

mineral acres that would be conveyed to the Langleys. The purchase agreement and the sale stated that 1,628.4 total acres were to be conveyed along with one-half of the mineral rights owned by Leenerts. Besides the overstated surface and mineral acreage, Landry and Caughfield made oral representations in front of witnesses that:

1.) The purchase price would be 100% financed;

2.) There would be no personal liability for the loans;

3.) There would be no payments due on the loan until the resale of the property was consummated;

4.) Langley would be provided a purchaser for the property as soon as the closing was consummated; and

5.) Langley would realize a large profit on the resale of the property.

On May 18, 1984, *seven months after the Langleys instituted their suit against Planters*, the Commissioner of Financial Institutions for the State of Louisiana declared Planters to be in an unsafe and unsound condition, closed Planters, and took possession of its books, property, and affairs. The Commissioner appointed the Federal Deposit Insurance Corporation (in its receivership capacity, the "FDIC") as receiver and liquidator thereof and the FDIC accepted such appointment. Pursuant to LSA - R. S. 6:457, upon the acceptance by the FDIC of its appointment as receiver and liquidator, the possession of and title to all of the assets, business, and property of the banking institution, of every kind and nature, passed to and vested in the FDIC as receiver without the execution of any instruments of conveyance, assignment, transfer or endorsement. Subsequently on May 18, 1984, pursuant to an order of the Twenty-Seventh Judicial District Court for

the Parish of St. Landry, State of Louisiana, the FDIC in its corporate capacity acquired all of the assets of Planters, including the assets which are the subject of this suit. This is known as a "purchase and assumption" transaction.

The District Court granted the FDIC's motion for summary judgment on the basis that 12 U.S.C. 1823(e) shields the FDIC from the affirmative defenses of the Langleys on the Planters note. The District Court noted, however, that there is authority for the Langleys' proposition that §1823(e) does not encompass situations where the maker of a note asserts fraud in the inducement of the underlying obligation. (Memorandum Ruling, p. A-23, *infra.*) The District Court also noted that there was no clear controlling precedent from the Fifth Circuit on this issue. Given the importance of a clear precedent on this issue and the possibility that district courts in the Fifth Circuit will be faced with similar

issues arising out of the collapse of Planters and other banks, the Langleys appealed.

The Fifth Circuit affirmed the District Court's judgment on the basis of §1823(e).

REASONS FOR GRANTING THE WRIT

The opinion of the Fifth Circuit in this case creates a conflict between the Circuit Courts over the interpretation of 12 U.S.C. 1823(e). See *Gunter v. Hutcheson*, 674 F. 2d 862 (11th Cir. 1982), *cert. denied*, 459 U.S. 826, 103 S. Ct. 60, 74 L.Ed.2d 63 (1982) and *FDIC v. Hatmaker*, 756 F. 2d 34 (6th Cir. 1985).

Section 1823(e) by its terms protects the FDIC only from "agreement[s]" not satisfying the section's requirement. In *Gunter* and *Hatmaker*, the Eleventh and Sixth Circuits have adopted an interpretation of §1823(e) which distinguishes between two types of fraud in the inducement in determining whether that section is applicable. One type is an oral promise by

the bank to perform a duty in connection with the execution of a note that it does not intend to perform. An example of such fraud in the inducement is a promise by the bank that the makers will not have to make any payments on the loan until the property securing the loan is sold by the makers. Another type of fraud in the inducement is a knowing misrepresentation made by the bank, not involving any promise, to induce a party to execute a promissory note. An example of such fraud in the inducement is a misrepresentation made by a bank that a given company is in sound financial condition in order to induce a party to borrow money to purchase stock in the company.

In the latter type of fraud in the inducement, there is no "agreement" between the parties; rather, a material misrepresentation regarding the subject matter of the loan fraudulently induces the borrowers consent to the transaction. The

Langleys claim that the representations made to them regarding the nature of the property purchased are so material to their consent that the proven falsity of these representations by an officer of the failed bank will negate the entire transaction. Thus, rather than attempting to hold a side agreement with the failed Planters Bank valid, the Langleys seek to prove that there was never an agreement at all because their consent was unlawfully obtained. As a result, Section 1823(e) is not applicable to this case. Section 1823(e) applies only to an "agreement" between a bank customer and the failed bank.

In *Gunter, supra*, the makers of a promissory note in favor of a failed bank brought suit against the failed bank and some of its officers and the FDIC. The FDIC had entered into a purchase and assumption agreement by which the FDIC purchased the note from another bank to which all of the failed bank's assets had been transferred.

The makers of the note sought rescission of the note against the FDIC asserting the violation of various securities laws and fraud as a result of actions taken by officers of the failed bank. Specifically, the makers alleged that in connection with the purchase of bank stock, the chairman of the board fraudulently represented that the bank was in "sound financial condition." The FDIC moved for summary judgment on the basis that it was protected against the customer's fraud claims by §1823(e) or under federal common law. The Eleventh Circuit Court of Appeals held that the claims by the makers of the note held by the FDIC were not barred by the statutory language in §1823(e). 674 F. 2d at 867.

The *Gunter* Court analyzed several decisions of the Fifth Circuit such as *Black v. FDIC*, 640 F. 2d 699 (5th Cir. 1981), *cert. denied*, 454 U. S. 838, 102 S. Ct. 143, 70 L.Ed.2d 119 (1981); *FDIC v. Hoover-Morris Enterprises*, 642 F. 2d 785 (5th Cir. 1981);

Chatham Ventures, Inc. v. FDIC, 651F. 2d 355 (5th Cir. 1981), *cert. denied*, 454 U. S. 1126, 102 S. Ct. 975 (1981); and *FDIC v. Lattimore Land Corp.*, 656 F. 2d 139 (5th Cir. 1981) which all held that Section 1823(e) shielded the FDIC from the defenses raised by the borrowers in those cases. With regard to these cases, the *Gunter* court reasoned:

> "The common thread running through these cases had been the assertion by the obligor that an oral side agreement with the bank controlled the rights of the parties. The cases, therefore, came squarely within the 'no agreement . . .shall be valid' language of Section 1823(e)." 674 F. 2d at 867.

The *Gunter* court went on to point out the difference between those cases and the case at bar:

> "The claim asserted by the Gunters, in contrast, is quite different. The essence of their argument is that no agreement existed because of the fraud of (the failed bank's) officers. While certain of the alleged misrepresentations could be construed as 'agreements' to perform certain acts in the future, such as deferring

> interest on the Gunters' notes, others clearly are not agreements of any sort. . . . Far from claiming that an oral agreement is 'valid' and controls the rights of the parties, the Gunters assert that the entire transaction was invalid from the beginning. As the district court noted, this claim is directly opposite to the 'shall be valid' language of Section 1823(e). Conse-quently, we agree with the trial court that the fraud claims at issue here are not barred by the statutory language in Section 1823." 674 F. 2d at 867.

The *Gunter* rationale has been approved by the Sixth Circuit Court of Appeals in the recent case of *FDIC v. Hatmaker*, 756 F. 2d 34 (6th Cir. 1985) where the Court stated:

> "Under section 1823(e), the case law has distinguished between two types of fraud in the inducement in determining whether that section is applicable. Gunter v. Hutcheson, 674 F. 2d 862, 867 (11th Cir. 1982), cert. denied, 459 U.S. 826, 103 S. Ct. 60, 74 L. Ed. 2d 63 (1982). One type of fraud in the inducement is an oral promise by the bank to perform a duty in connection

with the execution of a note that the bank does not intend to perform. An example of such fraud in the inducement is a promise by the bank to make future loans to the borrower which the bank does not plan to perform. See FDIC v. Lattimore Land Corp., 656 F. 2d 139 (5th Cir. 1981). Another type of fraud in the inducement is a misrepresentation made by the bank, not involving any promise, to induce a party to execute a promissory note. A good example of such fraud in the inducement is a misrepresentation by the bank that it is in sound financial condition in order to induce a party to borrow money to purchase its stock. Gunter, 674 F. 2d at 867.

In the second type of fraud in the inducement, no side agreement exists between the parties, and section 1823(e) cannot be applicable. In the first case, however, a side agreement is present to which section 1823 can be applied. Although that side agreement may have been fraudulently induced, it is still a separate agreement into which the parties voluntarily entered." 756 F. 2d at 36-37.

Further support for this position is found in the case of *In Re Longhorn Securities Litigation*, 573 F. Supp. 278 (W. D. Okla. 1983), where the court noted that both linguistically and legally, a representation is not an agreement. Black's Law Dictionary defines a representation as "a[s]tatement of fact made to induce another to enter into a contract," Black's Law Dictionary (5th Ed. 1979), p. 1169, whereas an agreement is defined as "a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances." Id. at 62. Webster's defines a representation as "a statement or account, especially made to convey a particular view or impression of something with the intention of influencing opinion or action." Webster's Third New International Dictionary (1981), p. 1926, whereas an agreement is defined as "the act of agreeing or coming to a mutual arrange-

ment." Id. at 43. A reading of the *Longhorn* case reveals the striking similarity between the allegations of the borrower in that case and the allegations advanced by the Langleys. 573 F. Supp. at 281.

In the instant case, the Langleys do in fact assert that there were "side agreements" concerning repayment of the note. The Langleys concede that the shield of §1823(e) protects the FDIC against their claims that the transaction should be rescinded as a result of representations made by Roy Caughfield, President of Planters, that the Langleys would have no personal liability on the notes, that the Langleys would not be required to make any payments on the subject loan until the property was sold and that the interest rate on the loan would be two (2%) percent above the prime rate of Chase Manhattan Bank. However, other misrepresentations alleged by the Langleys are clearly not agreements of any sort. For example, the Langleys allege

in Paragraph 23 of their original Complaint that the defendants represented that no outstanding mineral leases burdened the property when in truth and in fact there existed an outstanding mineral lease and, furthermore, the executive rights were held by another third party, John Barton. Also, according to the answers to Interrogatories, Landry and Caughfield claimed that the land included within its boundaries a certain number of surface acres and that the Langleys would obtain a certain percentage of mineral rights in the land. It is also alleged in the original Complaint that representations were made or facts were omitted by the defendants with the intention of convincing the Langleys to purchase property without being possessed of all the facts which defendants knew would be necessary for the Langleys to consider in order to make an informed decision regarding the purchase of the property and the terms thereof. The Langleys have alleged in

pleadings and have sworn in their answers to interrogatories that these representations were made. These allegations are clearly the same as those upheld by the Eleventh Circuit in *Gunter v. Hutcheson*, supra, as being claims that are not barred by the statutory language of §1823(e). The Langleys are not attempting to hold any side agreement with the failed Planters Bank valid; rather, the Langleys claims made in the original and amended Complaints, if proven, negate the entire transaction.

The Langleys' theory of fraudulent inducement as a result of the aforesaid misrepresentations is not a doctrine based on the parties' mutual assent. The Langleys contend that the Planters note is invalid and that such invalidity is caused by representations independent of any side agreement regarding the terms of the Planters loan. These false representations amount to factual fraud and are not barred by §1823(e) from being asserted against the

FDIC. *Gunter v. Hutcheson*, supra; *FDIC v. Hatmaker*, supra; *FDIC v. Leach*, 772 F. 2d 1262, 1267 (6th Cir. 1985).

CONCLUSION

The opinion of the Fifth Circuit in this case interpreting Section 1823(e) conflicts with *Gunter* and *Hatmaker*, decisions out of the Eleventh and Sixth Circuits respectively. In view of the rising number of bank failures in this country and increasing involvement of the FDIC, it is obvious that courts will be called upon to interpret Section 1823(e) in the future. Petitioners respectfully submit that certiorari should be granted in this case to resolve the conflict in the Circuit courts regarding the scope of Section 1823(e).

Respectfully submitted

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By:

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PETITIONERS

V.

FEDERAL DEPOSIT INSURANCE CORPORATION
RESPONDENT

PROOF OF SERVICE

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

William C. Shockey, after being duly sworn, deposes and says that pursuant to Rule 28 of this Court, he has served the Petition For Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit on counsel for the respondent by enclosing a copy thereof in an envelope, first class postage prepaid, properly addressed to:

1. Robert Pass
   Mark A. Brown
   Carlton, Fields, Ward, Emmanuel,
   Smith & Cutler, P.A.

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2. David S. Rubin
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Post Office Box 2997
Baton Rouge, Louisiana 70821-2997

and depositing same in the United States mail at Baton Rouge, Louisiana, on the _____ day of September, 1986.

_____
WILLIAM C. SHOCKEY

Sworn to and subscribed before me, this _____ day of September, 1986, at Baton Rouge, Louisiana.

_____
NOTARY PUBLIC
My Commission is for Life.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

W. T. LANGLEY and MARY ANN GRIMES LANGLEY,
Defendants-Appellants

V.

FEDERAL DEPOSIT INSURANCE CORP.,
Plaintiff-Appellee

NO. 85-4549
OPINION

Filed June 25, 1986

Before: John Minor Wisdom, Thomas M. Reavley, and Sam D. Johnson, Circuit Judges

OPINION

SAM D. JOHNSON, Circuit Judge

W. T. and Mary Ann Grimes Langley (the "Langleys") appeal from the district court's summary judgment, pursuant to Fed. R. Civ. P. 54(b), in favor of the Federal Deposit Insurance Corporation ("FDIC"). Holding that the district court correctly applied the statutory safeguards accorded the FDIC, this Court affirms.

I. BACKGROUND

The facts of this case arise out of the Langleys' purchase of a farm (the "Melville Property") in Pointe Coupee Parish, Louisiana, from Leenerts Farms, Inc. ("Leenerts"). Planters Trust & Savings Bank ("Planters") had made previous loans to the prior owners of the Melville property. These loans were in default. Roy Caughfield, who was then president of Planters, sought to extricate Planters from these defaulted loans. Assisted by Elmer Landry (who was, at that time, president of the Federal Land Bank Association of Opelousas), Caughfield arranged financing through Planters to assist the Langleys in the purchase of the Melville property. On October 3, 1980, a purchase agreement was executed by W. T. Langley and Leenerts. On December 19, 1980, the Langleys acquired the Melville property. Financing for the purchase was provided to the Langleys by the Federal Land Bank in the amount of $1.35

million secured by a first mortgage on the property,[1] and by Planters in the amount of $450,000.00, secured by a collateral mortgage in the amount of $500,000.00 on the property. The balance owed on the Planters note was renewed on January 27, 1982, and again on March 8, 1982.

The Langleys executed a promissory note, mortgage, and personal guaranties of their obligations to Planters. The promissory note, mortgage, and guaranties each contained unconditional promises by the Langleys to be fully obligated and liable for payment of the debt.

On September 26, 1983, Planters sued the Langleys for nonpayment. The Langleys, in turn, sued Planters, Caughfield, and Landry in federal district court. The two suits were consolidated in federal district court.

Despite the relatively unconditional

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[1]The Federal Land Bank note is discussed in the companion appeal. See *FDIC v. Langley*, N. 85-4738 (5th Cir. June 25, 1986).

nature of the Langleys' obligations as stated in the note and guaranties, the Langleys asserted, as a defense to the Planters' suit on the note, that Caughfield had represented to the Langleys that their obligations would be much less onerous. The Langleys alleged (and for purposes of the summary judgment motion, the district court accepted as true) that Planters made certain representations that the Langleys considered material to their entering the loan. These representations included:

(1) that the Langleys would have no personal liability on the loans and guaranties;

(2) that no payment would be due until the property was resold;

(3) that the Langleys would be provided a purchaser for the property to be resold;

(4) that the Langleys would realize a large profit by reselling the property;

(5) that the Melville property consisted of 1.628.4 acres;

(6) that the Melville property included 400 mineral acres;

(7) that there were no mineral leases on the property; and

(8) that the purchase price would be 100 percent financed.

On appeal the Langleys do not contend, and this Court's examination of the record has not found, that these alleged warranties or loan terms were contained in the promissory note, guaranty, or mortgage executed by the Langleys in their dealings with Planters.

On May 18, 1984, the Commissioner of Financial Institutions for the State of Louisiana declared Planters to be in an unsafe and unsound financial condition, closed Planters, and took possession of its books, property, and affairs. The FDIC, in its capacity as a receiver, was appointed receiver for Planters. The FDIC as

receiver, pursuant to court order, transferred the Langley note to the FDIC acting in its corporate capacity. The FDIC was then substituted for Planters[2] and moved for summary judgment against the Langleys on their liability on the Planters note. The district court granted the motion for summary judgment. *Planters Trust & Savings Bank v. Langley*, 615 F. Supp. 749 (W. D. La. 1985).

In its opinion, the district court held that the federal statutory protections surrounding the FDIC, *see* 12 U.S.C. §1823(e), precluded the assertion of the Langleys' defense that the loan documents did not fully set forth the understandings between the Langleys and Planters. 615 F. Supp. at 751. On appeal, the Langleys concede that many of the alleged misrepresentations, when considered separately, cannot be asserted against the FDIC under 12 U.S.C. §1823(e).

---

[2]The FDIC also appeared in the consolidated proceedings as receiver for Planters. On this appeal, however, the FDIC appears only in its corporate capacity.

These conceded defenses include such major misrepresentations as the nonrecourse nature of the loan, the promise to find a purchaser, and the representation that no payments would be demanded until the reselling. However, the Langleys contend tht others of the alleged misrepresentations, when considered separately, lie outside section 1823(e) and may be asserted against the FDIC since the FDIC obtained the note with actual knoweldge of these alleged misrepresentaions.[3] These misrepresentations concern the amount of acres in the Melville property and its mineral rights.

After thoroughly examining the Langleys' arguments, and the policies and jurisprudence surrounding section 1823(e), we conclude that the district court correctly held that the FDIC is entitled to

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[3]The FDIC assumes arguendo, and for purposes of the appeal from summary judgment only, that it acquired the Langleys' obligation with actual knowledge of their defenses.

summary judgment.

II. DISCUSSION

[1] Both Congress and the federal courts have recognized the paramount importance of the FDIC in stabilizing and protecting the nation's banking system. *See* S. Rep. No. 97-536, 97th Cong. 2d Sess. 3-4, *reprinted in* 1982 U. S. Code Cong. & Ad. News 3054, 3056-57; *FDIC v. Castle*, 781 F. 2d 1101, 1106 (5th Cir. 1986). Thus, the Supreme Court, originally as a matter of federal common law, determined that a maker of a promissory note is estopped from asserting against the FDIC that the maker and the failed bank agreed not to call the note for payment. *D'Oench, Duhme & Co. v. FDIC*, 315 U. S. 447, 62 S. Ct. 676, 86 L.Ed. 956 (1942). Following the Supreme Court's creation of such protections, Congress enacted statutory protections in favor of the FDIC and provided that:

> (e) **Agreements against interests of Corporation**

> No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank.

12 U.S.C. §1823(e). At least one of the several salutary purposes underlying section 1823(e) is to ensure that the FDIC may rely on the books and records of an insured institution by requiring that material agreements concerning a loan transaction be set forth in the bank's records. *FDIC v. Merchants National Bank of Mobile*, 725 F. 2d 634, 638 (11th Cir.), *cert. denied*, ___ U.S. ___ 105 S. Ct. 114 (1984). The reason for such a requirement is fundamental to the banking

system. If banks and borrowers were allowed to keep material terms of their transaction - oral, then the FDIC's examiners could not adequately assess a bank's strength. Moreover, the FDIC, without this vital information contained in a failed bank's records, would be unable to fully discharge its duty of determining what course the FDIC should follow in dealing with a failed bank's assets. *See id.* at 638 (describing FDIC options of liquidating a failed bank or arranging a "purchase and assumption" transaction and emphasizing the importance of accurate bank records in making determination). In order to promote this sound policy, "[t]he statute and the cases only require that the obligor lend himself 'to a scheme or arrangement whereby the banking authority on which the FDIC relied . . . was or was likely to be misled.'" *Chatham Ventures, Inc. v. FDIC*, 651 F. 2d 355, 361 (5th Cir. 1981) (quoting *D'Oench*, 315 U.S. at 460, 62 S. Ct. at 681), *cert. denied*, 456 U.S.

972, 102 S. Ct. 2234, 72 L.Ed. 2d 845 (1982). Further, the courts have held that under section 1823(e) and *D'Oench*, the obligor's intent in deceiving bank examiners or in creating incomplete records is immaterial; rather, "[t]he statute, by its terms does not require that the obligor lend himself to a deceptive scheme in the sense of participating with culpability in a fraud." *See Chatham Ventures, Inc.*, 651 F. 2d at 361. *See also FDIC v. First National Finance Co.*, 587 F. 2d 1009, 1012 (9th Cir. 1978).[4] To further secure this protection, the FDIC's knoweldge (whether actual or constructive) of the alleged defense is likewise immaterial under section 1823(e). *See FDIC v. de Jesus Velez*, 678 F. 2d 371, 375 (1st Cir.

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[4]Although the result may at times seem inconsistent, courts have been most hesitant to ignore the FDIC's protections, simply because officers of the failed bank were more at fault. *See, e.g., FDIC v. TWT Exploration Co.*, 626 F. Supp. 149, 156 (W.D. Okla. 1985). As the court in *FDIC v. First Mortgage Investors*, 485 F. Supp. 445, 454 (E.D. Wis. 1980) noted: "It is clear from the [Supreme] Court's holding in *D'Oench* and the Congressional policy expressed in section 1823(e), that those doing business with federally insured banks should avoid secret oral agreement. Failure to do so exposes the borrower to the risk that the rights provided by the [oral] agreement will be unavailable."

1982). *See also FDIC v. Investors Associates X. Ltd.*, 775 F. 2d 152, 155-56 (6th Cir. 1985)

[2] Turning from these principles to the facts of the instant case, it cannot be gainsaid that the Langleys and Planters withheld material terms from the eyes of federal examiners. Indeed, the absence of such terms from Planters' loan files as to the alleged nonrecourse nature of the loan and the deferral of all payments until the property was resold, effectively rendered what would appear to an objective observer to be a sound loan into one of highly questionable, if not minimal, value. It is clear that this total oral side agreement is an "agreement which tend[s] to diminish . . . the . . . interest of the [FDIC]." Thus, the Langleys clearly did not comport with the dictates of section 1823(e) and its predecessor, *D'Oench*. Despite the critical importance of these alleged loan terms, they were not included in the loan documents available to bank examiners. By not

insisting that Planters' promises and agreements be included in the loan documents - assurances which the Langleys concede go to the heart of their loan transaction - the Langleys lent themselves to a loan transaction that withheld the key aspects of their loan transaction from bank regulators. As this Court has noted, "The language of the statute is all encompassing; any agreement is subject to the statute if it tends to defeat or diminish FDIC's rights in an asset purchased under authority of §1823." *FDIC v. Hoover-Morris Enteprises*, 642 F. 2d 785, 787 (5th Cir. 1981).

[3] Recognizing this strong authority against what might otherwise be their key defenses, the Langleys seek to have this Court focus instead on Planters' alleged misrepresentations concerning the property to be purchased with the loan proceeds. The Langleys attempt to rely on *Gunter v. Hutcheson*, 674 F. 2d 862 (11th Cir.), *cert. denied*, 459 U.S. 826, 103 S. Ct. 60, 74 L.Ed.2d 63

(1982). In *Gunter*, the obligors had borrowed money from the bank to buy stock in an institution affiliated with the lender. In the course of the transaction, the bank officials alleged certain misrepresentations regarding the financial status and activities of the lending bank and the affiliated institution. *See Gunter v. Hutcheson*, 492 F. Supp. 546, 549 (S.D. Ga. 1980). With one relatively minor exception, the borrowers did not assert any misrepresentation regarding the loan terms. Given this, the district court held that that, while the representations could be deemed "agreements" within section 1823(e), they did not fall within the proscription of the statute. The Georgia district court reasoned that this was so because the obligors were not seeking to alter the terms of the written documents by the terms of an undisclosed and oral arrangement but instead were asserting that the written documents themselves were invalid because of the

underlying factual misrepresentation. 492 F. Supp. at 553. The Eleventh Circuit followed this analysis on appeal. 682 F. 2d at 867. Importantly, both the district court and the Eleventh Circuit held that summary judgment was nevertheless appropriate for the FDIC since the district court and the Eleventh Circuit held that the FDIC was protected by federal common law.[5]

In discussing *Gunter*, courts in dictum have attempted to separate the Eleventh Circuit's analysis into two categories: (1) "promissory" fraud (i.e., an oral promise by the bank to perform a duty in connection with the execution of a note that the bank does not intend to perform) which may *not* be asserted against the FDIC; and (2) "factual" fraud (i.e., a factual misrepresentation by the bank not involving the undertaking of any

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[5]Given our disposition of the instant case, which rests on §1823(e), we do not express comment on the scope of federal common law. Nor do we imply our approval of *Gunter's* analysis of §1823(e); we hold only that the Eleventh Circuit's analysis of §1823(e) should not be appliedto the instant case.

contractural duty) which *may* be asserted against the FDIC. *See FDIC v. Hatmaker*, 756 F. 2d 34, 36-37 (6th Cir. 1985) (dictum).

[4] Relying on *Gunter*, the Langleys assert that the misrepresentations regarding the land (e.g., surface and mineral acreage) are "factual" misrepresentations and that section 1823(e) does not apply. The Langleys' suggested mechanical approach, however, ignores the facts that the Langleys, in doing so, are attempting to assert a part of their total side agreement to vary the terms of their loan. In the instant case, the Langleys and Planters *did* enter into a side arrangement which was not disclosed in the loan papers. Moreover, the Langleys attempt to rely on various parts of that undisclosed arrangement to vary and add terms to the loan documents they executed. The Langleys/ Planters' undisclosed side agreement involved not only promises regarding the borrowing of money but also the bank's furnishing the property to be

bought with the loan proceeds. As part of this undislcosed arrangement, Planters made certain misrepresentations regarding the loan terms (e.g., nonrecourse nature of the loan) and the property to be purchased (e.g., surface and mineral acreage). Despite the critical importance of these oral warranties, they were not disclosed in the executed loan documents (nor do these documents indicate that Planters was so involved in the land purchase).

[5] Thus, to allow the Langleys to shift the focus of their defense in the instant case would create an unacceptable "end run around §1823(e)." *FDIC v. Lattimore Land Corp.*, 656 F. 2d 139, 146 n. 13 (5th Cir. 1981). As the district court in the instant case aptly noted:

> [W]hat becomes decisive for this Court is the clear policy of Congress to assist the FDIC in restoring stability after a bank failure. Permitting "end-runs" around §1823(e) would not aid the FDIC in its efforts to avert local - and possibly broader - crises stemming from bank failures.

Langley, 615 F. Supp. at 751. Thus, we hold that the Langleys' defenses, which emanate from their alleged agreement having the effect of misinforming the FDIC, are barred by the FDIC's statutory protections. *See FDIC v. de Jesus Velez*, 678 F. 2d at 375. *See also Investors Associates X.*, 775 F. 2d at 155-56; *FDIC v. MM&S Partners*, 626 F. Supp. 681 (N.D. Ill. 1985).

Accordingly, the judgment of the district court is

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

PLANTERS TRUST & SAVINGS BANK

VS.

W. T. LANGLEY, ET AL

CIVIL ACTION NO. 83-2612 "L"

MEMORANDUM RULING
(ENTERED JUNE 20, 1985)

On March 8, 1982, W. T. Langley and Mary Ann Langley executed a promissory note in the amount of $468,124.41, made payable to Planters Trust and Savings Bank. The Langleys defaulted and Planters Bank instituted an action in state court in September, 1983 to recover the balance due on the note. That action was subsequently transferred to this Court, and consolidated with other actions arising out of the collapse of the Planters Bank in May, 1984.

Among those actions were certain claims by the Langleys against Planters Bank.

In May, 1984, Planters Bank was closed by the Commissioner of Financial Institutions for the State of Louisiana. The Federal Deposit Insurance Corporation (FDIC) was appointed receiver of Planters Bank. Subsequent to its appointment as receiver of the Planters Bank, the FDIC in its corporate capacity acquired all of the assets of Planters, including the note at issue in this matter. The FDIC now moves for summary judgment against the Langleys as to their liability on the note.

I. THE CLAIM ON THE NOTE

The Langleys contend that they are not liable on the note because of fraudulent inducement by officers of Planters. Specifically, they allege that officers of Planters misrepresented certain essential facts about real property which was the consideration for the note. In response, the FDIC argues that 12 U.S.C. §1823(e) shields it

from any affirmative defenses the Langleys might have on the note.

12 U.S.C. §1823(e) provides:

> No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank.

The question presented to this Court is whether §1823(e) bars extrinsic proof that a written document in fact does not reflect any valid agreement.

The Fifth Circuit has not yet answered this question. In *FDIC v. Lattimore Land Corporation*, 656 F. 2d 139 (5th Cir.

1981), the defendant-makers on a promissory note alleged fraud in the inducement which vitiated the obligation. The Court concluded that the defendants had not made a sufficient showing of fraud in the inducement under state law and avoided resolving the question of whether §1823(e) protects the FDIC from such affirmative defenses. The Court, however, noted that:

> Our failure to put this case on that ground does not indicate that our answer to that question would be negative. Although there is authority holding that the FDIC is subject to the defense of fraud in the inducement, *FDIC v. Webb*, 464 F. Supp. 520, 525 (E. D. Tenn. 1978), there is also authority holding that the FDIC takes its interest free of such defenses either because §1823(e) gives the FDIC the same protection available to a holder in due course, *FDIC v. Rockelman*, 460 F. Supp. 999, 1002 (E. D. Wis. 1978). . . . Without entering a holding on this ground we simply note that, to this Court, an assertion of this defense against the FDIC seems merely to convert a claim of breach into a claim of fraud. If an obligor may successfully void a note and recoup damages against the FDIC based on claim of fraudulent inducement from an unwritten agreement, he will have made an end run around §1823(e) by asserting as

> fraudulent the same unwritten agreement of which a breach resulting in damages may not under §1823(e) be asserted against the FDIC. 656 F. 2d at 146, f.n.13.

This dicta by the 5th Circuit is in accord with a number of lower court cases. See, e.g., *FDIC v. Rodenberg*, 571 F. Supp. 455 (D.Md. 1983).

However, there is authority for the Langleys' proposition that §1823(e) does not encompass situations where the makers assert fraud in the inducement of the underlying obligation. In *Gunter v. Hutcheson*, 674 F. 2d 862 (11th Cir. 1982), the Court declared that:

> [T]he common thread running through these cases [where the FDIC prevailed] has been the assertion by the obligor that an oral side agreement with the bank controlled the rights of the parties. The cases, therefor, came squarely within the "no agreement . . . shall be valid" language of §1823(e). The claim asserted by the Gunters, in contrast, is quite different. The essence of their argument is that no agreement existed because of the fraud of Chattanooga Hamilton's officers. While certain of the alleged misrepresentations could be construed as "agreements" to perform

> certain acts in the future, such as deferring interest on the Gunters' notes, others clearly are not agreements of any sort. For example, the Gunters alleged that the chairman of the board of Chattanooga Hamilton fraudulently represented that the Hamilton banking system was in "sound financial condition." Far from claiming that an oral agreement is "valid" and controls the rights of the parties, the Gunters assert that the entire transaction was invalid from the beginning. As the district court notes, this claim is directly opposite the "shall be valid" language of §1823(e). Consequently, we agree with the trial court that the fraud claims at issue here are not barred by the statutory language in §1823(e).

Given that there exists no controlling precedent on this difficult question, and that what persuasive authority which exists is conflicting, what becomes decisive for this Court is the clear policy of Congress to assist the FDIC in restoring stability after a bank failure. Permitting "end-runs" around §1823(e) would not aid the FDIC in its efforts to avert local - and possibly broader - crises stemming from bank failures.

Accordingly, this Court holds that 12 U.S.C. §1823(e) bars defenses of fraud in the inducement where the FDIC has assumed and is attempting to collect on a promissory note valid on its face. It is thus unnecessary to examine the question of whether the Federal common law permits the Langleys' defense.

The motion for summary judgment by the FDIC against W. T. Langley and Mary Langley is therefore granted.

Lafayette, Louisiana, June 20, 1985.

s/John M. Duhe', Jr.
JUDGE, U.S. DISRICT COURT

APPENDIX C
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

PLANTERS TRUST & SAVINGS BANK

VS.

W. T. LANGLEY, ET AL

CIVIL ACTION NO. 83-2612 "L"

ORDER AND JUDGMENT

For the reasons assigned in today's Memorandum Ruling:

IT IS ORDERED that a judgment with prejudice be entered in favor of the Federal Deposit Insurance Corporation as to its claims against W. T. Langley and Mary Ann Langley.

Lafayette, Louisiana, June 20, 1985.

s/John M. Duhe', Jr.
JUDGE, U.S. DISRICT COURT

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

PLANTERS TRUST & SAVINGS BANK

VS. NO. CA-83-2612

W. T. LANGLEY, ET UX

CONSOLIDATED WITH

W. T. LANGLEY, ET UX

VS. NO. CA-84-0557

PLANTERS TRUST & SAVINGS BANK
OF OPELOUSAS, ET AL

REVISED JUDGMENT

This matter came up for hearing on Motion for Summary Judgment filed by The Federal Deposit Insurance Corporation.

Considering the pleadings, affidavits, arguments of counsel, the law and evidence appearing in favor thereof, for reasons assigned in writing:

IT IS HEREBY ORDERED that judgment is rendered herein in favor of The Federal

Deposit Insurance Corproation and against W. T. Langley and Mary Ann Grimes Langley, in solido, in the full principal amount of FOUR HUNDRED SIXTY-EIGHT THOUSAND SIX HUNDRED TWENTY-FOUR AND 41/100 ($468,624.41) DOLLARS, plus interest in the amount of twelve (12%) percent per annum from March 8, 1982, until paid, plus attorney's fees in the amount of $22,500.00, plus all costs of this proceeding.

JUDGMENT RENDERED at Lafayette, Louisiana on June 20, 1985.

JUDGMENT SIGNED at Lafayette, Louisiana, this 22 day of July, 1985.

s/John M. Duhe', Jr.
JUDGE, U.S. DISRICT COURT

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Supreme Court, U.S.
FILED
DEC 8 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-489

In the Supreme Court of the United States

OCTOBER TERM, 1986

W.T. LANGLEY AND MARY ANN GRIMES LANGLEY,
PETITIONERS

v.

FEDERAL DEPOSIT INSURANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that when the Federal Deposit Insurance Corporation (FDIC) acquires assets of an insolvent bank pursuant to a purchase and assumption transaction, the FDIC is shielded by 12 U.S.C. 1823(e) from a claim that an oral side agreement invalidates written loan documents.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A18) is reported at 792 F.2d 541. The opinion of the district court (Pet. App. A19-A25) is reported at 615 F. Supp. 749.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1986. The petition for a writ of certiorari was filed on September 23, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

12 U.S.C. 1823(e) provides:

> No agreement which tends to diminish or defeat the right, title or interest of the [Federal Deposit Insurance] Corporation in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank.

STATEMENT

1. This case arises from the appointment of the Federal Deposit Insurance Corporation (FDIC) as receiver for the Planters Trust & Savings Bank of Oppelousas, Louisiana (Planters) on May 18, 1984. Following Planters' failure, the FDIC arranged a purchase and assumption of Planters' assets. As part of that transaction, the FDIC, acting in its corporate capacity, acquired a portion of those assets, including a $450,000 note executed by petitioners (Pet. App. A4, A10-A11). The note constituted one step in a larger transaction in which petitioners purchased a farm. Petitioners allege that Planters' officials orally made the following representations which were material to that transaction (Pet. App. A4, A5, A7, A9):

(1) that the purchase price would be 100% financed;

(2) that petitioners would have no personal liability on their loans or guaranties;

(3) that no payments would be due until the property was resold;

(4) that petitioners would be provided a purchaser following the closing;

(5) that petitioners would realize a large profit upon reselling the property;

(6) that the property consisted of 1,628.4 acres;

(7) that the property included 400 mineral acres; and

(8) that there were no mineral leases on the property.

None of these alleged representations was disclosed in any of the transaction documents. Rather, the note contained an unconditional promise by petitioners to be fully obligated and liable for payment of the debt (as did the mortgage and personal guaranties also executed by petitioners as part of the transaction). Pet. App. A3.

2. Petitioners eventually defaulted on their obligations to Planters recited in the note. On September 26, 1983, Planters sued for nonpayment (Pet. App. A3). Petitioners responded by bringing a separate action against Planters and its officers alleging that petitioners had been fraudulently induced to sign the note (Pet. App. 5).[1] Following Planters' failure and the FDIC's acquisition of assets including the

[1] The actions were consolidated in the federal district court where Planters' collection suit was still pending (Pet. App. 4).

note, the FDIC, acting in its corporate capacity, was substituted as plaintiff in the pending collection suit and moved for summary judgment (Pet. App. 4-6). The district court granted the motion, ruling that 12 U.S.C. 1823(e) precluded petitioners from avoiding liability on the ground that the loan documents did not fully set forth their understanding with Planters (Pet. App. A6).

3. On appeal, petitioners conceded that Section 1823(e) precluded them from relying on many of the alleged misrepresentations to defeat FDIC's entitlement to payment (Pet. App. A6). Specifically, petitioners acknowledged that they could not rely on misrepresentations that were "promissory," a term which they defined to include the alleged representations concerning the nonrecourse nature of the loan, the absence of any payment obligation until resale, and the promise to find a subsequent purchaser (Pet. App. A7). Petitioners argued, however, that other representations (*e.g.*, the total acreage of the property and its mineral rights) misstated existing facts, and were therefore not governed by Section 1823(e). Pet. App. A7. The court of appeals rejected petitioners' attempt to distinguish, for Section 1823(e) purposes, between promissory and factual misrepresentations. The court explained that Section 1823(e) is intended to ensure that all material terms of an obligor's agreement with a bank are disclosed in the records of the bank (Pet. App. A9-A10). To allow a distinction between promissory fraud and factual fraud would defeat this purpose and would create, the court stated, an "unacceptable 'end run' around § 1823(e)" (Pet. App. A17).

ARGUMENT

The court of appeals carefully considered and correctly decided the issue presented here. Its decision does not conflict with any decision of this Court or of any other court of appeals. Accordingly, the case does not warrant further review.

1. Petitioners contend (Pet. 12-23) that factual misrepresentations should be distinguished from promissory misrepresentations for Section 1823(e) purposes. Under petitioners' view of the statute, the FDIC is protected from defenses based upon false promises made by bank officials but not from defenses based upon false statements of fact by officials of the failed bank. The court of appeals correctly ruled that the distinction urged by petitioners—between the oral *promises* and the oral *warranties* they say were contained in an undisclosed side agreement—is not supported by the statute and is not meaningful in this context (Pet. App. A16-A17).

Congress created the FDIC in order to stabilize and protect the nation's banking system (Pet. App. A8). To that end, the FDIC performs several critical functions, including the examination of banks and the insurance of deposits. *Id.* at A10; 12 U.S.C. 1811 *et seq.* Through its examinations the FDIC is able to decide whether to insure a bank at the outset, whether to terminate insurance, and whether to take measures to correct unsound banking practices. Recognizing the importance of this function, Congress enacted Section 1823(e) to ensure that bank examiners may rely on bank records in critical decisions often made under extreme time pressure.[2] If banks

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[2] When a bank is closed by its chartering authority, the FDIC must quickly determine whether to pay the insured statutory amounts from the Permanent Insurance Fund while

and borrowers were permitted to keep material terms of their transactions unwritten, the FDIC could not adequately assess a bank's strength (Pet. App. A9-A10).

When the FDIC purchases a failed bank's assets, Section 1823(e) protects the FDIC from claims made by debtors that the bank's assets are saddled with unknown liabilities (*FDIC* v. *La Rambla Shopping Center, Inc.*, 791 F.2d 215 (1st Cir. 1986)).[3] Peti-

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the failed bank's receiver liquidates the assets of the estate to pay uninsured depositors and other creditors (12 U.S.C. 1821(f)) or to take the less drastic step of arranging a purchase and assumption transaction (12 U.S.C. 1823(c)(2)(A)). The many advantages of the purchase and assumption alternative are well-recognized, most notably, that the assuming bank generally reopens the failed bank on the next business day, thereby preventing any loss or inconvenience to depositors and any interruption of vital banking services. In order to preserve this advantage, it is imperative that the FDIC consummate the purchase and assumption transaction as quickly as possible. But the statutory authorization for the purchase and assumption alternative is generally limited to situations where the costs to the Permanent Insurance Fund are less than they would be in a straight insurance payoff (12 U.S.C. 1823(c)(4)(A)). Consequently, Section 1823(e) plays a crucial role, for if a bank's records could not be relied upon to ascertain the bank's assets, the FDIC would be unable quickly and fully to discharge its duty of determining what course to follow in disposing of those assets (Pet. App. A10).

[3] As the courts have consistently held, Section 1823(e) shields the FDIC from a host of defenses, including, for example, claims that the debtor never received the consideration for the loan (*FDIC* v. *Fonseca*, 795 F.2d 1102 (1st Cir. 1986)); that the loan was to have been extended and rewritten at a lower interest rate (*FDIC* v. *Vestring*, 620 F. Supp. 1271 (D. Kan. 1985)); that debtors were to receive further financing (*FDIC* v. *Lattimore Land Corp.*, 656 F.2d 139 (5th Cir. 1981)); that debtors would not be personally liable (*FDIC* v.

tioners attempt to distinguish this case from the general rule by segregating the undisclosed side representations they say were made to them into two categories: promissory and factual misrepresentations (Pet. 20-21). They concede (*id.* at 20) that Section 1823(e) shields the FDIC from those claims based on alleged false promises by the bank.[4] But petitioners contend, as they did unsuccessfully in the court of appeals, that their claims regarding false state-

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Hoover-Morris Enterprises, 642 F.2d 785 (5th Cir. 1981)); that the maker's liability would be limited to his trustee capacity (*FDIC* v. *Armstrong*, 784 F.2d 741 (6th Cir. 1986)); that the partners guaranteeing the debt were to be collectively liable only for a portion of the debt (*FDIC* v. *Castle*, 781 F.2d 1101 (5th Cir. 1986)); and that there had been an accord and satisfiaction (*Public Loan Co.* v. *FDIC*, 803 F.2d 82 (3d Cir. 1986)).

In many of these cases the debtors contended, as petitioners do here (Pet. App. 12-14, 20-21), that they were not seeking to enforce an oral agreement which limited the value of their note, but to completely invalidate the fraudulently induced transaction. The courts have routinely held that Section 1823(e) bars such fraud defenses against the FDIC. See, *e.g.*, *FDIC* v. *Armstrong*, *supra*; *FDIC* v. *Castle*, *supra*; *FDIC* v. *Hatmaker*, 756 F.2d 34 (6th Cir. 1985); *FDIC* v. *W.H. Venture*, No. 84-5673 (E.D. Pa. May 22, 1986); *FDIC* v. *Vestring*, *supra*; *FDIC* v. *Rodenberg*, 571 F. Supp. 455 (D. Md. 1983); *FDIC* v. *Rockelman*, 460 F. Supp. 999 (E.D. Wis. 1978).

[4] Indeed, by signing a note that was unconditional and enforceable under its terms, while entering into an alleged oral side agreement that the note would not be enforced, petitioners entered into exactly the kind of "scheme or arrangement" that was condemned by this Court in *D'Oench, Duhme & Co.* v. *FDIC*, 315 U.S. 447 (1942). Having joined such an arrangement, petitioners may not now escape their obligation by claiming that they were in turn defrauded by a co-participant in the scheme. See *British Columbia Investment Co.* v. *FDIC*, 420 F. Supp. 1217 (S.D. Cal. 1976).

ments as to the acreage and mineral rights are beyond the scope of Section 1823(e) and are sufficient in themselves to invalidate the note. The court of appeals correctly perceived that petitioners were in essence alleging that portions of an oral side agreement—"oral warranties" (Pet. App. A17)—had the effect of rendering unenforceable their written promises; and the court correctly concluded that the proffered defense would allow an unacceptable "end run" around the statute (*ibid.*). As the Fifth Circuit explained in an earlier case, "[i]f an obligor may successfully void a note and recoup damages against the FDIC based on a claim of fraudulent inducement from an unwritten agreement, he will have made an end run around § 1823(e) by asserting as fraudulent the same unwritten agreement of which a breach resulting in damages may not under § 1823(e) be asserted against the FDIC." *FDIC* v. *Lattimore Land Corp.*, 656 F.2d 139, 146 n.13 (1981).[5]

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[5] Petitioners also contend (Pet. 12-18) that the decision below creates a circuit conflict on the question whether Section 1823(e) contemplates a distinction between promissory and factual fraud. There is, however, no conflict between this case and *Gunter* v. *Hutcheson*, 674 F.2d 862 (11th Cir.), cert. denied, 459 U.S. 826 (1982). The court below distinguished *Gunter* on its facts, explaining that the approach adopted by the Eleventh Circuit was inappropriate to the particular allegations in this case (Pet. App. A15 n.5). In any event, the court in *Gunter* held on other grounds that the FDIC was immune from claims of fraud in the underlying transaction. Petitioners also cite *FDIC* v. *Hatmaker*, 756 F.2d 34 (6th Cir. 1985), in support of their contention that a conflict exists (Pet. 17-18). In *Hatmaker*, however, the Sixth Circuit held that a debtor was barred from asserting a fraudulent inducement defense against the FDIC under Section 1823(e); its discussion of *Gunter* was dictum.

The promissory/factual fraud distinction urged by petitioners would defeat the purpose of Section 1823 (e), which is to prevent borrowers, and others dealing with a bank, from invoking undisclosed side agreements as defenses against their written obligations after the FDIC has acquired the bank's assets. Such a result would make it impossible for bank examiners to evaluate bank assets or for FDIC officials to assess the viability of purchase and assumption transactions in the manner Congress intended. See note 2, *supra*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1986

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Supreme Court, U.S.
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CLERK

No. 86-489

In the Supreme Court of the United States

OCTOBER TERM, 1986

W.T. LANGLEY AND MARY ANN GRIMES LANGLEY,
Petitioners,

vs.

FEDERAL DEPOSIT INSURANCE CORPORATION
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED ON SEPTEMBER 23, 1986
WRIT OF CERTIORARI GRANTED ON JANUARY 12, 1987

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NOTATION

The opinion of the Fifth Circuit Court of Appeals is printed in the Petition for a Writ of Certiorari at pages A-1 through A-18. The Memorandum Ruling of the District Court is printed in the Petition for a Writ of Certiorari at pages A-19 through A-25. The judgment of the District Court is printed in the Petition for a Writ of Certiorari at pages A-26 through A-29.

CV83-2612
Sec D
Closed

PLAINTIFFS	DEFENDANTS
FEDERAL DEPOSIT INSURANCE CORP. (10-5-84)	LANGLEY, W.T. (D1 LANGLEY, MARY ANN GRIMES (D2

SEALED EXCEPT TO THE COUNSEL OF PARTIES TO THIS LITIGATION

28 USC 1332, Diversity, Removed from St. Landry Parish, 27th Judicial District Court, Docket No. 90, 519-B; Petition on promissory note.

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SEALED EXCEPT TO THE COUNSEL OF PARTIES TO THIS LITIGATION

CV83-2612
Sec. D

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CV84-0557
Sec L

PLAINTIFFS	DEFENDANTS
LANGLEY, W.T. *LANGLEY, ANN GRIMES*	***CAUGHFIELD, ROY E.* *LANDRY, ELMER* ***Amended complaint:* 2/21/84 Federal Land Bank of Jackson (formerly Fed. Land Bank of New Orleans) Federal Deposit Insurance Co. ***Substituted party deft eff 6-10-85 *CONSOLIDATED CASE # "L"* *Closed 9-4-85*

SEALED EXCEPT TO THE COUNSEL OF PARTIES TO THIS LITIGATION

TRANSFER from MDLA #83-1110, Sec. B, Diversity proceeding consisting of four counts, three based on breach of state contract law and fourth, misrepresentations in the sale of certain immovable property and mineral interests.

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***THESE ATTYS ADDED TO MASTER, CV83-2612

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***W. S. McKenzie, T.A. & Frederick R. Tulley)*
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P.O. Drawer 2471
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504/387-3221
for Federal land Bank of Jackson

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December 5, 1980

Planters Trust & Savings Bank
Opelousas, LA

Mr. W. T. Langley
P. O. Box 581
Blytheville, Arkansas 72315

IN RE: Lands belonging to Leenerts Farms, Inc.

(SEE EXHIBIT "A" WHICH IS ATTACHED HERETO AND SIGNED FOR IDENTIFICATION HEREWITH, THE SAME BEING MADE A PART HEREOF AS FULLY AND TO THE SAME EXTENT AS IF WHOLLY WRITTEN OUT HEREIN.)

Gentlemen:

At your request, I have examined title to the lands described in the attached Exhibit "A" and, from my examination of the indices of the conveyance and mortgage records of the Parish of Avoyelles, LA, and considering the property and prescriptive laws of this state, I find that on this date LEENERTS FARMS, INC. has good, valid and merchantable title to the said property, subject to the following exceptions, to-wit:

1) Any lack of right to access to and from the property which may exist as reflected by a current ground survey;
2) Any deficiencies in land area that may exist and as would be reflected by a current ground survey;
3) Any encroachments of improvements upon boundary or servitude lines that may be reflected by a current ground survey;
4) Taxes for 1980 are now due and owing;
5) Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land;
6) Any rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at date of examination;
7) Any defects, liens, encumbrances, servitudes, rights-of-way, adverse claims or other matters created, suffered, assumed or agreed to by present or former owners and not shown by the public records;

8) Any unrecorded liens and/or charges not disclosed by the mortgage indices;

9) This opinion relates only to the surface land title. As to the ownership of the mineral rights and as to the existence and legal effect of any mineral leases or mineral exploration activity on or near the subject property, I express no opinion;

10) This opinion relates only to the current status of the title. Whether any donations in the title chain are subject to future attack, I express no opinion;

11) Any federal, state, parish or municipal tax lien or encumbrance filed against the property anywhere other than the seat of the parish government where the property is located;

12) This opinion in no way deals with the adequacy or availability of utilities or drainage;

In addition to Items 1 through 12, Tract I is also subject to the following exceptions, to-wit:

13) Right-of-way from C. C. Crews to Pointe Coupee Parish (Electric Cooperative) dated Sept. 3, 1938, filed Jan 26, 1939, in COB 0 # 383 of the official records of Pointe Coupee Parish, LA;

14) Easement from Violet K. Borne et al to USA dated June 22, 1939, filed June 26, 1939, in COB 5, # 516 of the official records of Pointe Coupee Parish, LA;

15) Flowage Easement from Frank W. Schultz to U.S. of America dated Sept. 2, 1939, filed Sept. 6, 1939, in COB D # 1149, records of Pointe Coupee Parish, LA;

16) Easement from Charles C. Crews to U.S. of America dated Dec. 21, 1939, filed Dec. 30, 1939, in COB P # 2056 of the official records of Pointe Coupee Parish, LA;

17) Flowage Easement from Frank G. Honeycutt to U.S. of America dated Feb. 9, 1940, filed April 12, 1940, in COB Q # 1328 of the official records of Pointe Coupee Parish, LA;

18) Flowage Easement from Dr. Charles C. Crews to U.S. of America dated Aug. 10, 1940 filed Sept. 7, 1940, in COB Q # 2816 of the official records of Pointe Coupee Parish, LA;

19) Quit Claim from Violet K. Borne to Pointe Coupee Parish School Board granting right of School Board to remove its school building dated Aug. 28, 1940, filed Oct. 9, 1940, in COB Q # 3113 of the official records of Pointe Coupee Parish, LA;

20) Flowage Easement from Charles C. Crews and Sally Fisher to

U.S. of America dated and filed Nov. 18, 1940, in COB Q 12 of the official records of Pointe Coupee Parish, LA;
21) Right-of-way from Dr. Carroll K. Crews to Transcontinental Gas Pipeline Corp. dated Feb. 28, 1949, filed March 24, 1949, in COB 23 # 474 of the official records of Pointe Coupee Parish, LA;
22) Servitude Agreement by and between John W. Barton and Gulf States Utilities dated Feb. 8, 1967, filed Feb. 13, 1967, in COB 68 # 15 of the official records of Pointe Coupee Parish, LA;
23) Reservation of all outstanding minerals by John W. Barton in that certain Act of Exchange with Assumption of Mortgage by and between John W. Barton and Kenneth Rogers et al dated Aug. 1, 1974, filed Aug. 7, 1974, in COB 118 # 32 of the official records of Pointe Coupee Parish, LA;
24) Oil, gas and mineral lease from John W. Barton et al to Joseph J. McCormick for a term of five (5) years dated Jan. 14, 1977, filed Feb. 2, 1977, in COB 138 # 102 of the official records of Pointe Coupee Parish, LA;
25) Oil, gas and mineral lease from John W. Barton et al to Joseph J. McCormick for a term of five (5) years dated Jan. 14, 1977, filed Feb. 2, 1977, in COB 138 # 422 of the official records of Pointe Coupee Parish, LA;
26) Mineral Reservation of 2/3rds of all minerals by Kenneth R. Rogers et al in that certain Act of Cash Sale with Assumption of Mortgage and Vendor's lien from Kenneth R. Rogers et al to Leenerts Farms, Inc. dated May 25, 1978, filed May 30, 1978, in COB 153 # 253 of the official records of Pointe Coupee Parish, LA;
27) Agreement amending payment of delay rentals by and among Kenneth R. Rogers et al and Leenerts Farms, Inc. and Chevron, Inc. dated May 7, 1979, filed June 28, 1979, in COB 167 # 295 of the official records of Pointe Coupee Parish, LA;
28) Agreement amending payment of delay rentals by and among Kenneth R. Rogers et al and Leenerts Farms, Inc. and Chevron, Inc. dated May 7, 1979, filed June 28, 1979, in COB 167 # 296 of the official records of Pointe Coupee Parish, LA;
29) Assignment of all of assignor's mineral interest in property warranted not to be less than 1/4 of LNB Tract; 1/12 of Borne Tract, 1/6 of Honeycutt Tract and 0 of Crews Tract from Leenerts Farms, Inc. to Don I. Williams filed Aug. 6, 1980; in COB 190 # 76 of the official records of Pointe Coupee Parish, LA;
30) Mortgage with Vendor's Lien and Privilege Retained from

Leenerts Farms, Inc. to Kenneth R. Rogers et al in the amount of $550,000.00 dated May 25, 1978, filed May 30, 1978, in MOB 115 # 153 of the official records of Pointe Coupee Parish, LA;

31) Collateral Mortgage from Leenerts Farms, Inc. to Future Holders (Planters Trust & Savings Bank) in the amount of $300,000.00 dated March 21, 1979, filed March 22, 1979, in MOB 119 # 287 of the official records of Pointe Coupee Parish, LA;

32) Mortgage from Leenerts Farms, Inc. to John Hancock Mutual Life Insurance Company in the amount of $1,000,000.00 dated Dec. 12, 1979, filed Dec. 12, 1979, in MOB 123 # 260 of the official records of Pointe Coupee Parish, LA;

33) Act of Subordination of Mortgage and Vendor's Lien and Privilege from Kenneth R. Rogers et al to John Hancock Mutual Insurance Co. subordinating Item 30 listed above to and in favor of Item 32 listed above dated and filed Dec. 12, 1979, in MOB 126 # 261 of the official records of Pointe Coupee Parish, LA;

34) Act of Subordination of Mortgage from Planters Trust & Savings Bank to John Hancock Mutual Insurance Company subordinating Item 31 listed above to and in favor of Item 32 listed above dated and filed Dec. 12, 1979, in MOB 123 # 262 of the official records of Pointe Coupee Parish, LA;

35) Amendment to Mortgage and Mortgage Note from Leenerts Farms, Inc. to Kenneth R. Rogers et al in the amount of $550,000.00, which said amendment is dated and filed Dec. 12, 1979, in MOB 123 # 265 of the official records of Pointe Coupee Parish, LA;

36) Mortgage from Leenerts Farms, Inc. to Future Holders (Planters Trust & Savings Bank) in the amount of $500,000.00 dated and filed Aug. 6, 1970, in MOB 127 # 209 of the official records of Pointe Coupee Parish, LA;

37) Consolidated Judgment rendered in the matter entitled Rice Capital Sales, Inc. vs Leenerts Farms, Inc. and Top Crop Seed & Supply Co. vs Leenerts Farms, Inc. in the amount of $15,521.60 plus legal interest plus $1,600.00 attorney fee dated and filed Oct. 16, 1980, in MOB 129 # 84 of the official records of Pointe Coupee Parish, LA;

38) Consolidated Judgment rendered in the matter entitled Rice Capital Sales, Inc. vs Leenerts Farms, Inc. and Top Crop Seed and Supply Co., Inc. vs Leenerts Farms, Inc. in the amount of $32,017.86 plus legal interest plus $3,200.00 attorney fee dated and

filed Oct. 16, 1980, in MOB 129 # 85 of the official records of Pointe Coupee Parish, LA;

In addition to Items 1 through 12, Tract II is subject to the following exceptions to-wit:

13) Right-of-way from Louisiana Realty Co. to the U.S. of America dated Oct. 23, 1940, recorded in COB Q # 638 of the official records of Pointe Coupee Parish, LA;
14) Right-of-way from Louisiana National Bank to Interstate Oil Pipeline Co. dated Feb. 24, 1953, filed March 24, 1953, in COB 36 # 77 of the official records of Pointe Coupee Parish, LA;
15) Servitude Agreement by and between John W. Barton and Gulf States Utilities dated Nov. 22, 1965, filed March 18, 1966, in COB 64 # 56 of the official records of Pointe Coupee Parish, LA;
16) Reservation of all outstanding minerals by John W. Barton in that certain Act of Exchange by and between John W. Barton and Kenneth Rogers et al dated Aug. 1, 1974, filed Aug. 7, 1974, in COB 118 # 32 of the official records of Pointe Coupee Parish, LA;
17) Oil, Gas and Mineral Lease from John W. Barton et al to Joseph C. McCormick for a term of five (5) years dated Aug. 20, 1976, filed Sept. 13, 1976, in COB 134 # 242 of the official records of Pointe Coupee Parish, LA;
18) Ratification of Oil, Gas and Mineral Lease from Kenneth R. Rogers et al to Dalco Oil Co. dated Aug. 23, 1976, filed Sept. 16, 1976, in COB 134 # 15 of the official records of Pointe Coupee Parish, LA;
19) Oil, Gas and Mineral Lease from John W. Barton et al to Joseph J. McCormick for a term of five (5) years dated Jan 14, 1977, filed Feb. 2, 1977, in COB 138, # 102 of the official records of Pointe Coupee Parish, LA;
20) Oil, Gas and Mineral Lease from John W. Barton et al to Joseph J. McCormick for a term of five (5) years dated Jan 14, 1977, filed Feb. 2, 1977, in COB 138, # 422 of the official records of Pointe Coupee Parish, LA;
21) Mineral Reservation of 2/3rds of all minerals by Kenneth R. Rogers et al in that certain Act of Cash Sale with Assumption of Mortgage and Vendor's Lien from Kenneth R. Rogers et al to Leenerts Farms, Inc. dated May 25, 1978, filed May 30, 1978, in COB 153, # 253 of the official records of Pointe Coupee Parish, LA;
22) Agreement amending payment of delay rentals by and among

Kenneth R. Rogers et al and Leenerts Farms, Inc. and Chevron, Inc. dated May 7, 1979, filed June 28, 1979, in COB 167 # 295 of the official records of Pointe Coupee Parish, LA;

23) Agreement amending payment of delay rentals by and among Kenneth R. Rogers et al and Leenerts Farms, Inc. and Chevron, Inc. dated May 7, 1979, filed June 28, 1979, in COB 167 # 296 of the official records of Pointe Coupee Parish, LA;

24) Assignment of all of assignor's mineral interest in property warranted not to be less than 1/4 of LNB Tract, 1/12 of Borne Tract, 1/6 of Honeycutt Tract and 0 of Crews Tract from Leenerts Farms, Inc. to Don I. Williams filed Aug. 6, 1980 in COB 190 # 76 of the official records of Pointe Coupee Parish, LA;

25) Mortgage with Vendor's Lien and Privilege Retained from Leenerts Farms, Inc. to Kenneth R. Rogers et al in the amount of $550,000.00 dated May 25, 1978, filed May 30, 1978, in MOB 115 # 153 of the official records of Pointe Coupee Parish, LA;

26) Collateral Mortgage from Leenerts Farms, Inc. to Future Holders (Planters Trust & Savings Bank) in the amount of $300,000.00 dated March 21, 1979, filed March 22, 1979, in MOB 119 # 287 of the official records of Pointe Coupee Parish, LA;

27) Mortgage from Leenerts Farms, Inc. to John Hancock Mutual Life Insurance Company in the amount of $1,000,000.00 dated Dec. 12, 1979, filed Dec. 12, 1979, in MOB 123 # 260 of the official records of Pointe Coupee Parish, LA;

28) Act of Subordination of Mortgage and Vendor's Lien and Privilege from Kenneth R. Rogers et al to John Hancock Mutual Insurance Co. subordinating Item 25 listed above to and in favor of Item 27 listed above dated and filed Dec. 12, 1979, in MOB 126 # 261 of the official records of Pointe Coupee Parish, LA;

29) Act of Subordination of Mortgage from Planters Trust & Savings Bank to John Hancock Mutual Insurance Company subordinating Item 26 listed above to and in favor of Item 27 listed above dated and filed Dec. 12, 1979, in MOB 123 # 262 of the official records of Pointe Coupee Parish, LA;

30) Amendment to Mortgage and Mortgage Note from Leenerts Farms, Inc. to Kenneth R. Rogers et al in the amount of $550,000.00, which said amendment is dated and filed Dec. 12, 1979, in MOB 123 # 265 of the official records of Pointe Coupee Parish, LA;

31) Mortgage from Leenerts Farms, Inc. to Future Holders (Planters Trust & Savings Bank) in the amount of $500,000.00 dated and filed

Aug. 6, 1970, in MOB 127 # 209 of the official records of Pointe Coupee Parish, LA;

32) Consolidated Judgment rendered in the matter entitled Rice Capital Sales, Inc. vs Leenerts Farms, Inc. and Top Crop Seed & Supply Co. vs Leenerts Farms, Inc. in the amount of $15,521.60 plus legal interest, plus $1,600.00 attorney fee dated and filed Oct. 16, 1980, in MOB 129 # 84 of the official records of Pointe Coupee Parish, LA;

33) Consolidated Judgment rendered in the matter entitled Rice Capital Sales, Inc. vs Leenerts Farms, Inc. and Top Crop Seed & Supply Co. vs Leenerts Farms, Inc. in the amount of $32,017.86 plus legal interest, plus $3,200.00 attorney fee dated and filed Oct. 16, 1980, in MOB 129 # 85 of the official records of Pointe Coupee Parish, LA.

Sincerely yours,

NELSON M. LEE

EXHIBIT "A"

TRACT I.

Certain tracts or parcels of ground, together with all buildings and improvements thereon and all rights, ways, servitudes and advantages thereunto belonging or in anywise appertaining, including all alluvion and batture, situated in the Parish of Pointe Coupee, State of LA, being more fully described as follows, to-wit:

All of Sections 16, 17, 18, 19, 20 and 21, T4S, R7E, lying West of the center line of the dredged drainage canal running through said sections and East of the top of the bank of the Atchafalaya River, SAVE AND EXCEPT: 8.27 acres owned now or formerly by Transcontinental Gas Pipe Line Corporation in the Western portions of Sections 17, 18 and 19;

All of Sections 22 and 23, T4S, R7E, lying East of the top bank of the Atchafalaya River, SAVE AND EXCEPT: 20 acres owned now or formerly by Eddie Vignes in the Western portion of Sec. 23, and a one hundred (100') foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections;

All of Sections 24 and 25, T4S, R7E, lying East of the top of the bank of the Atchafalaya River and West of the lands in the Eastern portion

of Sections 24 and 25 owned now or formerly by Sampson C. Smith, SAVE AND EXCEPT: a one hundred (100') foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections, and the Village of Red Cross, LA, in the Western portion of Section 25;

Two certain lots or parcels of ground, situated in that subdivision in Sec. 25, T4S, R7E, known as RED CROSS and designated as LOTS TWENTY-TWO (22) and TWENTY-THREE (23) on the official map of said subdivision recorded under Entry Number 27710, Conveyance Records of Pointe Coupee Parish, LA, each of said lots fronting fifty (50') feet on Kuhlman Street by the depth of 148.5 feet between parallel lines.

TRACT II.

Certain tracts or parcels of ground, together with all buildings and improvements thereon and all rights, ways, servitudes and advantages thereunto belonging or in anywise appertaining, including all alluvion and batture, situated in the Parish of Pointe Coupee, State of LA, being more fully described as follows, to-wit:

All of the South ½ of Section 41 and the North ½ of Section 42, T4S, R7E, SAVE AND EXCEPT: (1) 2.06 acres also known as Lot 3 owned now or formerly by Emile Carmouche on LA High #10 in the Western portion of said half sections and (2) that portion of the southern ½ of the north ½ of Section 42 lying south of LA Hwy. #10 containing 44.38 acres, more or less;

All of South ½ of Section 80, T4S, R8E.

Tract I and Tract II are a portion of the property acquired by Morrison Grain Company, Inc. and Morrison-Quirk Grain Corporation from Louisiana National Bank of Baton Rouge, Robert N. Crews et al, Frank Gilbert Honneycutt et ux and Violet Kuhlmann Borne et al by acts of record in COB 60, Entry No. 501; COB 61, Entry No. 188, COB 61, Entry No. 119 and COB 61, Entry No. 94, respectively; and being part of the same property acquired by BARTON by act of record in COB 62, Entry No. 43; and being part of the same property acquired by ROGERS by act of record in COB 118, Entry No. 32 all of the official records of Pointe Coupee Parish, LA.

The total acreage included in the tracts of land above described being 1628.4 acre.

All is in accordance with a map prepared by Toxie Craft, C. E. dated Aug. 31, 1967, entitled "Map Showing the survey of the John Barton Property being portions of Sections 16 through 25, T4S, R7E, LESS the 20 + acre Vignes Tract, Sections 30 through 34, T4S, R7E, the South ½ of Section 41 and the North ½ of Section 42, T4S, R7E, LESS 2.06 acres in Lot 3 for Carmouche, and the South ½ of Section 80, T4S, R8E, all lying in Pointe Coupee Parish, LA. for John W. Barton" recorded with an act of mortgage in MOB 69, Entry No. 56, of the Records of Pointe Coupee Parish, LA on Feb. 16, 1968, said property being located in Sections 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 41 and 42, T4S, R7E, and Section 80, T4S, R8E, Pointe Coupee Parish, LA.

ENTRY NO: _____

LEENERTS FARMS, INC	:	UNITED STATES OF AMERICA
	:	
TO	:	STATE OF LOUISIANA
	:	
W. T. LANGLEY AND MARY ANN GRIMES LANGLEY	:	PARISH OF POINTE COUPEE
	:	
FILED: _____	:	BY: _____

CASH DEED

BE IT KNOWN That on this the 19th day of December, 1980,

BEFORE ME the undersigned Notary Public, duly commissioned and qualified in and for the State of LA, Parish of Avoyelles, and before the two undersigned competent witnesses personally came and appeared:

LEENERTS FARMS, INC., an Illinois corporation authorized to do and doing business in the State of LA, herein represented by its President, Roger L. Leenerts, duly authorized to act herein as per the attached resolution which said corporation has a mailing address of P.O. Box 220, Golden, Adams County, Illinois,

hereinafter referred to as VENDOR, who does by these presents, grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver with all legal warranties and with full subrogation in and to all the rights and actions of warranty which they have or may have against all preceding owners and vendors unto:

W. T. LANGLEY and MARY ANN GRIMES LANGLEY, married to and living with each other, the said W. T. LANGLEY appearing herein Individually and as Agent and Attorney-in-Fact for MARY ANN GRIMES LANGLEY as per Power of Attorney dated Dec. 16, 1980, which is attached hereto and made a part hereof, residents of Blytheville, ARK,

hereinafter referred to as VENDEES accepting and purchasing for

itself, its successors and assigns and acknowledging due delivery and possession of the following described property, to-wit:

(SEE EXHIBIT "A" WHICH IS ATTACHED HERETO AND SIGNED FOR IDENTIFICATION BY THE PARTIES NAMED ABOVE, THE SAME BEING MADE A PART HEREOF AS FULLY AND TO THE SAME EXTENT AS IF WHOLLY WRITTEN OUT HEREIN.)

The herein conveyed property is not the family home of any of the parties hereto.

Vendor herein does not warrant title to oil, gas and mineral rights herein conveyed. However, Vendor reserves one-half (½) of any oil, gas and other mineral rights it may own in, on or under the tracts of land herein conveyed and Vendor conveys to Vendees one-half (½) of any oil, gas and other mineral rights it may own in, on or under said tracts of land herein conveyed.

TO HAVE AND TO HOLD the said property unto the said Vendees, W. T. LANGLEY and MARY ANN GRIMES LANGLEY, their heirs and assigns forever.

This sale is made and accepted for and in consideration of ONE MILLION SIX HUNDRED THIRTY-FIVE THOUSAND AND NO/100 DOLLARS, cash, which said Vendees have well and truly paid to the Vendor, who hereby acknowledges receipt thereof and grants full acquittance and discharge therefor.

The certificate of mortgages is hereby waived and taxes for 1980 are to be paid by Vendor.

Should any clause or provision of this Cash Deed be invalid or void for any reason, such invalid or void clause or provision shall not affect the whole of this instrument but the balance of the provisions hereof shall remain in full force and effect.

THIS DONE AND SIGNED at Bunkie, Avoyelles Parish, LA on this the 19th day of December, 1980, in the presence of me, the undersigned Notary Public, and in the presence of the two undersigned competent witnesses after due reading of the whole.

WITNESSES:

/s/ Barbara J. Mix

/s/ Gail Riche Juneau

LEENERTS FARMS, INC.,
VENDOR

BY: /s/ Roger L. Leenerts
ROGER L. LEENERTS, President

/s/ W. T. Langley

W. T. LANGLEY, VENDEE

MARY ANN GRIMES LANGLEY, VENDEE

BY: /s/ W. T. Langley

W. T. LANGLEY, AGENT AND ATTORNEY-IN-FACT

/s/ Linda W. Meeker

-NOTARY PUBLIC-

My commission expires at death.

STATE OF LOUISIAINA
PARISH OF POINTE COUPEE

I HEREBY certify that the foregoing is a true and correct copy of the original as the same appears on record in my office in Conveyence Book 199 Entry No. 21, Mortgage Book _____ Entry No. _____, filed Dec. 23, 1980.

Given under my hand and seal of office this the 24th, Dec. A.D., 1980.

/s/ Geraldine Smith, Dy.

Clerk and Recorder

EXHIBIT "A"

TRACT I.

Certain tracts or parcels of ground, together with all buildings and improvements thereon and all rights, ways, servitudes and advantages thereunto belonging or in anywise appertaining, including all alluvion and batture, situated in the Parish of Pointe Coupee, State of LA, being more fully described as follows, to-wit:

All of Sections 16, 17, 18, 19, 20 and 21, T4S, R7E, lying West of the center line of the dredged drainage canal running through said sections and East of the top of the bank of the Atchafalaya River, SAVE AND EXCEPT: 8.27 acres owned now or formerly by Transcontinental Gas Pipe Line Corporation in the Western portions of Sections 17, 18 and 19;

All of Sections 22 and 23, T4S, R7E, lying East of the top bank of the Atchafalaya River, SAVE AND EXCEPT: 20 acres owned now or formerly by Eddie Vignes in the Western portion of Sec. 23, and a one hundred (100')

foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections;

All of Sections 24 and 25, T4S, R7E, lying East of the top of the bank of the Atchafalaya River and West of the lands in the Eastern portion of Sections 24 and 25 owned now or formerly by Sampson C. Smith, SAVE AND EXCEPT: a one hundred (100') foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections, and the Village of Red Cross, LA, in the Western portion of Section 25;

Two certain lots or parcels of ground, situated in that subdivision in Sec. 25, T4S, R7E, known as RED CROSS and designated as LOTS TWENTY-TWO (22) and TWENTY-THREE (23) on the official map of said subdivision recorded under Entry Number 27710, Conveyance Records of Pointe Coupee Parish, LA each of said lots fronting fifty (50') feet on Kuhlman Street by the depth of 148.5 feet between parallel lines.

TRACT II.

Certain tracts or parcels of ground, together with all buildings and improvements thereon and all rights, ways, servitudes and advantages thereunto belonging or in anywise appertaining, including all alluvion and batture, situated in the Parish of Pointe Coupee, State of LA, being more fully described as follows, to-wit:

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All of South ½ of Section 80, T4S, R8E.

Tract I and Tract II are a portion of the property acquired by Morrison Grain Company, Inc. and Morrison-Quirk Grain Corporation from Louisiana National Bank of Baton Rouge, Robert N. Crews et al, Frank Gilbert Honneycutt et ux and Violet Kuhlmann Borne et al by acts of record in COB 60, Entry No. 501; COB 61, Entry No. 188, COB 61, Entry No. 119 and COB 61, Entry No. 94, respectively; and being part of the same property acquired by BARTON by act of record in COB 62, Entry No. 43; and being part of the same property acquired by ROGERS by act of record in COB 118, Entry No. 32 all of the official records of Pointe Coupee Parish, LA.

The total acreage included in the tracts of land above described being 1628.4 acre.

All is in accordance with a map prepared by Toxie Craft, C. E. dated Aug. 31, 1967, entitled "Map Showing the survey of the John Barton Property

being portions of Sections 16 through 25, T4S, R7E, LESS the 20 + acre Vignes Tract, Sections 30 through 34, T4S, R7E, the South ½ of Section 41 and the North ½ of Section 42, T4S, R7E, LESS 2.06 acres in Lot 3 for Carmouche, and the South ½ of Section 80, T4S, R8E, all lying in Pointe Coupee Parish, LA, for John W. Barton'' recorded with an act of mortgage in MOB 69, Entry No. 56, of the Records of Pointe Coupee Parish, LA on Feb. 16, 1968, said property being located in Sections 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 41 and 42, T4S, R7E, and Section 80, T4S, R8E, Pointe Coupee Parish, LA.

TRACT I IS SUBJECT TO THE FOLLOWING:

1) Right-of-way from C. C. Crews to Pointe Coupee Parish (Electric Cooperative) dated Sept. 3, 1938, filed Jan 26, 1939, in COB 0 # 383 of the official records of Pointe Coupee Parish, LA;
2) Easement from Violet K. Borne et al to USA dated June 22, 1939, filed June 26, 1939, in COB 5, # 516 of the official records of Pointe Coupee Parish, LA;
3) Flowage Easement from Frank W. Schultz to U.S. of America dated Sept. 2, 1939, filed Sept. 6, 1939, in COB D # 1149, records of Pointe Coupee Parish, LA;
4) Easement from Charles C. Crews to U.S. of America dated Dec. 21, 1939, filed Dec. 30, 1939, in COB P # 2056 of the official records of Pointe Coupee Parish, LA;
5) Flowage Easement from Frank G. Honeycutt to U.S. of America dated Feb. 9, 1940, filed April 12, 1940, in COB Q # 1328 of the official records of Pointe Coupee Parish, LA;
6) Flowage Easement from Dr. Charles C. Crews to U.S. of America dated Aug. 10, 1940 filed Sept. 7, 1940, in COB Q # 2816 of the official records of Pointe Coupee Parish, LA;
7) Quit Claim from Violet K. Borne to Pointe Coupee Parish School Board granting right of School Board to remove its school building dated Aug. 28, 1940, filed Oct. 9, 1940, in COB Q # 3113 of the official records of Pointe Coupee Parish, LA;
8) Flowage Easement from Charles C. Crews and Sally Fisher to U.S. of America dated and filed Nov. 18, 1940, in COB Q # 12 of the official records of Pointe Coupee Parish, LA;
9) Right-of-way from Dr. Carroll K. Crews to Transcontinental Gas Pipeline Corp. dated Feb. 28, 1949, filed March 24, 1949, in COB 23 # 474 of the official records of Pointe Coupee Parish, LA;
10) Servitude Agreement by and between John W. Barton and Gulf States Utilities dated Feb. 8, 1967, filed Feb. 13, 1967, in COB 68 # 15 of the official records of Pointe Coupee Parish, LA;
11) Reservation of all outstanding minerals by John W. Barton in that certain

Act of Exchange with Assumption of Mortgage by and between John W. Barton and Kenneth Rogers et al dated Aug. 1, 1974, filed Aug. 7, 1974, in COB 118 # 32 of the official records of Pointe Coupee Parish, LA;
12) Oil, gas and mineral lease from John W. Barton et al to Joseph J. McCormick for a term of five (5) years dated Jan. 14, 1977, filed Feb. 2, 1977, in COB 138 # 102 of the official records of Pointe Coupee Parish, LA;
13) Oil, gas and mineral lease from John W. Barton et al to Joseph J. McCormick for a term of five (5) years dated Jan. 14, 1977, filed Feb. 2, 1977, in COB 138 # 422 of the official records of Pointe Coupee Parish, LA;
14) Mineral Reservation of 2/3rds of all minerals by Kenneth R. Rogers et al in that certain Act of Cash Sale with Assumption of Mortgage and Vendor's Lien from Kenneth R. Rogers et al to Leenerts Farms, Inc. dated May 25, 1978, filed May 30, 1978, in COB 153 # 253 of the official records of Pointe Coupee Parish, LA;
15) Agreement amending payment of delay rentals by and among Kenneth R. Rogers et al and Leenerts Farms, Inc. and Chevron, Inc. dated May 7, 1979, filed June 28, 1979, in COB 167 # 295 of the official records of Pointe Coupee Parish, LA;
16) Agreement amending payment of delay rentals by and among Kenneth R. Rogers et al and Leenerts Farms, Inc. and Chevron, Inc. dated May 7, 1979, filed June 28, 1979, in COB 167 #296 of the official records of Pointe Coupee Parish, LA;
17) Assignment of all of assignor's mineral interest in property warranted not to be less than 1/4 of LNB Tract; 1/12 of Borne Tract, 1/6 of Honeycutt Tract and 0 of Crews Tract from Leenerts Farms, Inc. to Don I. Williams filed Aug. 6, 1980; in COB 190 # 76 of the official records of Pointe Coupee Parish, LA;

TRACT II IS SUBJECT TO THE FOLLOWING:

1) Right-of-way from Louisiana Realty Co. to the U.S. of America dated Oct. 23, 1940, recorded in COB Q # 638 of the official records of Pointe Coupee Parish, LA;
2) Right-of-way from Louisiana National Bank to Interstate Oil Pipeline Co. dated Feb. 24, 1953, filed March 24, 1953, in COB 36 # 77 of the official records of Pointe Coupee Parish, LA;
3) Servitude Agreement by and between John W. Barton and Gulf States Utilities dated Nov. 22, 1965, filed March 18, 1966, in COB 64 # 56 of the official records of Pointe Coupee Parish, LA;
4) Reservation of all outstanding minerals by John W. Barton in that certain Act of Exchange by and between John W. Barton and Kenneth Rogers et al

dated Aug. 1, 1974, filed Aug. 7, 1974, in COB 118 # 32 of the official records of Pointe Coupee Parish, LA;

5) Oil, Gas and Mineral Lease from John W. Barton et al to Joseph C. McCormick for a term of five (5) years dated Aug. 20, 1976, filed Sept. 13, 1976, in COB 134, # 242 of the official records of Pointe Coupee Parish, LA;

6) Ratification of Oil, Gas and Mineral Lease from Kenneth R. Rogers et al to Dalco Oil Co. dated Aug. 23, 1976, filed Sept. 16, 1976, in COB 134 # 15 of the official records of Pointe Coupee Parish, LA;

7) Oil, Gas and Mineral Lease from John W. Barton et al to Joseph J. McCormick for a term of five (5) years dated Jan 14, 1977, filed Feb. 2, 1977, in COB 138, # 102 of the official records of Pointe Coupee Parish, LA;

8) Oil, Gas and Mineral Lease from John W. Barton et al to Joseph J. McCormick for a term of five (5) years dated Jan 14, 1977, filed Feb. 2, 1977, in COB 138, # 422 of the official records of Pointe Coupee Parish, LA;

9) Mineral Reservation of 2/3rds of all minerals by Kenneth R. Rogers et al in that certian Act of Cash Sale with Assumption of Mortgage and Vendor's Lien from Kenneth R. Rogers et al to Leenerts Farms, Inc. dated May 25, 1978, filed May 30, 1978, in COB 153, # 253 of the official records of Pointe Coupee Parish, LA;

10) Agreement amending payment of delay rentals by and among Kenneth R. Rogers et al and Leenerts Farms, Inc. and Chevron, Inc. dated May 7, 1979, filed June 28, 1979, in COB 167 # 295 of the official records of Pointe Coupee Parish, LA;

11) Agreement amending payment of delay rentals by and among Kenneth R. Rogers et al and Leenerts Farms, Inc. and Chevron, Inc. dated May 7, 1979, filed June 28, 1979, in COB 167 # 296 of the official records of Pointe Coupee Parish, LA;

12) Assignment of all of assignor's mineral interest in property warranted not to be less than 1/4 of LNB Tract, 1/12 of Borne Tract, 1/6 of Honeycutt Tract and 0 of Crews Tract from Leenerts Farms, Inc. to Don I. Williams filed Aug. 6, 1980 in COB 190 # 76 of the official records of Pointe Coupee Parish, LA;

RESOLUTIONS OF THE BOARD OF DIRECTORS OF LEENERTS FARMS, INC.

At a special called meeting of the Board of Directors of LEENERTS FARMS, INC. held at its principal place of business in Golden, Adams County, Illinois, on the 3rd day of October, 1980, subsequent to due notice, every member being present and each member having waived notice of

time, date, place and purpose of said Board of Directors' meeting, upon motions duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED: That LEENERTS FARMS, INC. sell unto W. T. LANGLEY and MARY ANN GRIMES LANGLEY by Cash Deed certain immovable property as described in the copy of the Cash Deed which is made a part of these resolutions under the terms, provisions and conditions contained therein.

FURTHER RESOLVED: That ROGER L. LEENERTS, President of LEENERTS FARMS, INC. be and he is hereby authorized and empowered to sign and execute for and on behalf of the corporation any and all acts necessary to carry out the intent and purpose of the hereinabove set forth resolutions for and on behalf of the corporation.

/s/ J. L. Leenerts

SECRETARY

NO. _____

W. T. LANGLEY and
MARY ANN GRIMES LANGLEY
Mortgagor

TO: PLANTERS TRUST &
SAVINGS BANK
Mortgagee

Filed _____

_____
Deputy Clerk

COLLATERAL MORTGAGE
STATE OF LOUISIANA
PARISH OF AVOYELLES

On this 19th day of December, 1980, before me, a Notary Public for the Parish of Avoyelles, Louisiana, and in the presence of the subscribing witnesses, personally appeared:

W. T. LANGLEY and MARY ANN GRIMES LANGLEY, married to and living with each other, the said W. T. Langley appearing herein Individually and as Agent and Attorney-in-Fact for MARY ANN GRIMES LANGLEY as per Power of Attorney dated December 16, 1980, which is attached hereto and made a part hereof,

herein called MORTGAGOR, whether one or more, residents of and domiciled in Blytheville, Arkansas whose permanent mailing address is declared to be P. O. Box 581 Blytheville, Arkansas 72135 who declared that MORTGAGOR is justly and truly indebted unto:

PLANTERS TRUST & SAVINGS BANK, a LA banking corporation domiciled in Opelousas, LA, herein represented by its Vice-President, WALTER C. CORBELLO, duly authorized to act herein,

herein called MORTGAGEE, domiciled in Opelousas, LA, whose permanent mailing address is declared to be Opelousas, LA in the sum of FIVE HUNDRED THOUSAND AND NO/100---- DOLLARS. To represent this debt, mortgagor has subscribed their one promissory note dated this day, payable to the order of PLANTERS TRUST & SAVINGS BANK, Opelousas, LA, in the sum of $500,000.00 (This includes interest at the rate of 0% per annum from date to demand) with interest at the rate of 12% per annum from date until paid, or until one year after due date whichever first occurs, payable ON DEMAND.

The note paraphed for identification with this act further provides that, if it should be placed in the hands of an attorney for collection,

by suit or otherwise, the marker will pay attorney's fees fixed at 25% of the amount due or in suit.

The note was paraphed "Ne varietur" by me, Notary, for identification herewith, and MORTGAGEE acknowledges its receipts and accepts this mortgage.

In order to secure the full payment of this indebtedness in principal and interest, together with all costs, including attorney's fees, MORTGAGOR specially mortgages unto MORTGAGEE and such person or persons who may eventually be the holder or holders of the note, the following described property:

(SEE EXHIBIT "A" CONSISTING OF ONE PAGE WHICH IS ATTACHED HERETO AND SIGNED FOR IDENTIFICATION HEREWITH, THE SAME BEING MADE A PART HEREOF AS FULLY AND TO THE SAME EXTENT AS IF WHOLLY WRITTEN OUT HEREIN.)

The mortgagors declare that the note herein described and this mortgage securing it are not given or issued in evidence of any specific debt, but are intended and shall be used as collateral to secure payment of any indebtedness now existing or hereafter to arise on the part of the mortgagor, or any of them, to secure which the within described note may at any time be pledged to the PLANTERS TRUST & SAVINGS BANK, Opelousas, LA, and any one of said mortgagors is specifically authorized to pledge said mortgage note to secure such indebtedness.

Default on this obligation immediately matures this obligation and all other obligations of makers herein then possessed by holder of this obligation; default on any other obligations of makers herein then possessed by holder of this obligation immediately matures this obligation.

Default on any installment accelerates and matures this entire obligation.

Default on this obligation accelerates and matures all presently existing notes of makers and any notes executed in the future by makers held by the holder of this note at the time of said default.

Each signature binds signer individually and as agent of the marriage community, thus obligating both separate and community assets of signer.

Should any clause or provision of this collateral mortgage be invalid

or void for any reason, such invalid or void clause or provision shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain in full force and effect.

The property shall remain mortgaged until the full payment of the note. It shall not be sold, alienated, or encumbered to the MORTGAGEE'S prejudice. If the debt, or any part of it, is not punctually paid at its maturity, and according to its tenor, it shall be lawful for the property mortgaged to be seized and sold under executory or other legal process issued by any court of competent jurisdiction, with or without appraisement, to the highest bidder, payable cash; MORTGAGOR hereby expressly dispenses with appraisement and confesses judgement in favor of any holder of the note, for its full amount with interest, and costs, including attorney's fees and all other amounts secured hereby.

MORTGAGOR shall pay all taxes assessed and all liens which may be asserted by any governmental authorities against the property before they become delinquent, and keep the building and improvements on it, or which may be placed on it, constantly insured against loss by fire and such other casualties as are covered by the Louisiana Standard Insurance Extended Coverage form in an amount equal to the unpaid balance on the note, unless otherwise noted herein, in solvent insurance companies, and shall deliver the policies and renewals of such insurance to the holder of the note. If MORTGAGOR fails to do so, the holder is authorized (but not obligated) to pay the taxes or liens, and cause such insurance to be affected at MORTGAGOR'S expense. The holder of said note shall become subrogated to all the rights and privileges of the governmental authorities to which taxes or liens were due, and all sums expended in paying taxes, liens, fees or insurance shall bear interest at the rate of eight (8%) per cent per annum from date of disbursement, and be further secured by this mortgage to the additional amount of fifteen (15%) per cent of the original amount of the note, in any calendar year.

If MORTGAGOR shall become insolvent, or be adjudged a bankrupt, or proceedings be taken against MORTGAGOR looking to the appointment of a receiver or syndic, or any proceedings be instituted for the seizure or sale of the property herein mortgaged by judicial process, or in case MORTGAGOR shall fail to pay the note, or any sum secured by this mortgage, or any part thereof, or the interest thereon, or the taxes, promptly when due, or in effect and keep in

force insurance, or to transfer and deliver the policies, as herein provided, then, in any such event, all the indebtedness shall ipso factor, and without any demand or putting in default, become immediately due and exigible.

All parties signing the within instrument have declared themselves to be of full legal capacity.

Both the MORTGAGOR and MORTGAGOR'S spouse declared that they do expressly waive and renounce in favor of the holder of the note any homestead exemption or claim thereto, under the Constitution and laws of this State with respect to the property being mortgaged. The word "NOTE" as used above includes the several notes, if more than one is transferred to, and that term includes all indebtedness secured hereby, including principal, interest, attorney's fees, and costs.

All the agreements and stipulations herein contained and all the obligations herein assumed, shall insure to the benefit of and be binding upon the heirs, successors and assigns of the respective parties hereto.

The certificate of mortgages required by Article 3364 of the Revised Civil Code of Louisiana is dispensed with by the parties.

Done and signed by the parties at my office in Avoyelles Parish, Louisiana, on the date first above written in the presence of me, Notary, and the following competent witnesses who have signed in the presence of the parties and me, Notary.

WITNESSES:

/s/ Gail Riche Juneau

/s/ Barbara J. Mix

/s/ W. T. LANGLEY

W. T. LANGLEY

MARY ANN GRIMES LANGLEY

BY: /s/ W. T. Langley

W. T. LANGLEY, AGENT AND ATTORNEY-IN-FACT

PLANTERS TRUST & SAVINGS BANK

BY: /s/ Walter C. Corbello

WALTER C. CORBELLO, VICE-PRESIDENT

/s/ Linda D. Meeker

Notary Public

EXHIBIT "A"

TRACT I.

Certain tracts or parcels of ground, together with all buildings and improvements thereon and all rights, ways, servitudes and advantages thereunto belonging or in anywise appertaining, including all alluvion and batture, situated in the Parish of Pointe Coupee, State of LA, being more fully described as follows, to-wit:

All of Sections 16, 17, 18, 19, 20 and 21, T4S, R7E, lying West of the center line of the dredged drainage canal running through said sections and East of the top of the bank of the Atchafalaya River, SAVE AND EXCEPT: 8.27 acres owned now or formerly by Transcontinental Gas Pipe Line Corporation in the Western portions of Sections 17, 18 and 19;

All of Sections 22 and 23, T4S, R7E, lying East of the top bank of the Atchafalaya River, SAVE AND EXCEPT: 20 acres owned now or formerly by Eddie Vignes in the Western portion of Sec. 23, and a one hundred (100') foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections;

All of Sections 24 and 25, T4S, R7E, lying East of the top of the bank of the Atchafalaya River and West of the lands in the Eastern portion of Sections 24 and 25 owned now or formerly by Sampson C. Smith, SAVE AND EXCEPT: a one hundred (100') foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections, and the Village of Red Cross, LA, in the Western portion of Section 25;

Two certain lots or parcels of ground, situated in that subdivision in Sec. 25, T4S, R7E, known as RED CROSS and designated as LOTS TWENTY-TWO (22) and TWENTY-THREE (23) on the official map of said subdivision recorded under Entry Number 27710, Conveyance Records of Pointe Coupee Parish, LA, each of said lots fronting fifty (50') feet on Kuhlman Street by the depth of 148.5 feet between parallel lines.

TRACT II.

Certain tracts or parcels of ground, together with all buildings and improvements thereon and all rights, ways, servitudes and advantages thereunto belonging or in anywise appertaining, including all alluvion and batture, situated in the Parish of Pointe Coupee, State of

LA, being more fully described as follows, to-wit:

All of the South ½ of Section 41 and the North ½ of Section 42, T4S, R7E, SAVE AND EXCEPT: (1) 2.06 acres also known as Lot 3 owned now or formerly by Emile Carmouche on LA Hwy. #10 in the Western portion of said half sections and (2) that portion of the southern ½ of the north ½ of Section 42 lying south of LA Hwy. #10 containing 44.38 acres, more or less;

All of South ½ of Section 80, T4S, R8E.

Tract I and Tract II are a portion of the property acquired by Morrison Grain Company, Inc. and Morrison-Quirk Grain Corporation from Louisiana National Bank of Baton Rouge, Robert N. Crews et al, Frank Gilbert Honneycutt et ux and Violet Kuhlmann Borne et al by acts of record in COB 60, Entry No. 501; COB 61, Entry No. 188, COB 61, Entry No. 119 and COB 61, Entry No. 94, respectively; and being part of the same property acquired by BARTON by act of record in COB 62, Entry No. 43; and being part of the same property acquired by ROGERS by act of record in COB 118, Entry No. 32 all of the official records of Pointe Coupee Parish, LA.

The total acreage included in the tracts of land above described being 1628.4 acre.

All is in accordance with a map prepared by Toxie Craft, C. E. dated Aug. 31, 1967, entitled "Map Showing the survey of the John Barton Property being portions of Sections 16 through 25, T4S, R7E, LESS the 20+ acre Vignes Tract, Sections 30 through 34, T4S, R7E, the South ½ of Section 41 and the North ½ of Section 42, T4S, R7E, LESS 2.06 acres in Lot 3 for Carmouche, and the South ½ of Section 80, T4S, R8E, all lying in Pointe Coupee Parish, LA, for John W. Barton" recorded with an act of mortgage in MOB 69, Entry No. 56, of the Records of Pointe Coupee Parish, LA on Feb. 16, 1968, said property being located in Sections 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 41 and 42, T4S, R7E, and Section 80, T4S, R8E; Pointe Coupee Parish, LA.

SIGNED FOR IDENTIFICATION:

/s/ W. T. Langley

W. T. LANGLEY
MARY ANN GRIMES LANGLEY
BY: /s/ W. T. Langley
W. T. LANGLEY, AGENT AND
ATTORNEY-IN-FACT

PLANTERS TRUST &
SAVINGS BANK

BY: /s/ Walter C. Corbello
WALTER C. CORBELLO,
VICE-PRESIDENT

POWER OF ATTORNEY

STATE OF Arkansas
COUNTY OF Mississippi

BE IT KNOWN, that on this 16th day of December, in the year 1980, before me, Janet Tucker, a Notary Public in and for the County of Mississippi, State of Arkansas, duly commissioned and qualified, personally came and appeared:

Mary Ann Langley

of the full age of majority and a resident of the County of Mississippi State of Arkansas, who declared that she does by those presents constitute and appoint W. T. Langley, a resident of Mississippi County, Arkansas, her true and lawful Agent and Attorney-in-Fact, general and special, giving and by these presents granting unto said Agent and Attorney-in-Fact full power and authority for her and in her name and behalf to mortgage to Planters Trust & Savings Bank, under the terms and conditions as hereinafter set forth, the following described property situated in the Parish of Pointe Coupee, State of Louisiana, to-wit:

(Insert legal description of property)

Said appearer does authorize said Agent and Attorney-in-Fact to execute a Cash Deed as Vendee from Leenerts Farms, Inc. involving the property described in Exhibit "A" attached hereto.

Said appearer does authorize said Agent and Attorney-in-Fact to execute a mortgage on said property in the sum of FIVE HUNDRED THOUSAND AND NO/100----($500,000.00)----DOLLARS, or in any other amount approved by said Bank and to execute the necessary promissory note to the order of Planters Trust & Savings Bank said note and mortgage to provide that the indebtedness is to bear interest at the rate of 12 (____) per cent per annum, said interest to be payable according to the tenor of the said note.

The said Mary Ann Langley does specifically authorize and empower his Agent and Attorney-in-Fact to execute the note and mortgage on the usual form required in such case, it being his express intent and purpose to authorize and empower his Agent and Attorney-

in-Fact to assent to any and all stipulations contained in said mortgage, with the full understanding that said mortgage will contain the pact de non alienando. Said appearer further declares that his Agent and Attorney-in-Fact is especially authorized and empowered to confess judgment in said mortgage; to authorize executory process in the event of default or for any other reason as set out in said mortgage; to authorize the payment of ten (10%) per cent attorneys' fees if the note is placed in the hands of an attorney for collection; to waive appraisement; to waive the three days notice provided by Article 2639 of the Louisiana Code of Civil Procedure, and the three days delay provided by Article 2331; and to waive notice of seizure by the sheriff, and all other notices required by law; to waive any and all homestead rights; to mortgage and hypothecate the above described property until the full and final payment of said note in principal, interest, attorneys' fees, taxes, insurance premiums, costs, and expenses; to accept any and all clauses as are contained in the said act of mortgage above referred to; to endorse any and all checks which may be issued to him individually or together with other parties in connection with said mortgage; to approve the distribution of funds as set out in the loan disbursement statement; to receive and receipt for any surplus funds remaining after the conditions of the loan have been complied with and after all expenses and proper deductions have been paid; to sign and execute in his behalf any required form of application or amended application for loan if necessary; to subscribe for and pledge stock as required by law; to execute any and all papers or documents necessary or incident to the closing of said loan; to receive, sign and acknowledge receipt of all papers and documents required by Regulation Z (12 CFR 226) promulgated by the Board of Governors of the Federal Reserve System pursuant to Title I (Truth in Lending Act) of the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146 et seq); particularly the Financial Disclosure Statement and the Notice of the Right of Rescission; to exercise the right of rescission granted by said Act; and generally to do and perform all and every other act, matter, and thing whatsoever, as shall or may be requisite and necessary as fully, amply, and effectually, and to all intents and purposes with the same validity as if all and every such act, matter, or thing were or had been particularly stated, expressed, and especially provided for, or as the said appearer could or might do if personally present, said appearer hereby ratifying and confirming all and whatsoever the said Agent and Attorney-in-Fact

shall lawfully do or cause to be done by virtue of this power of attorney.

Said appearer further declares that said Agent and Attorney-in-Fact is authorized to make proper declaration of her marital status in said acts of mortgage, which proper declaration is as follows:

Married, husband W. T. Langley

THUS DONE AND PASSED AT Blytheville, Mississippi, County, Arkansas, on the day, month and year aforesaid in the presence of the undersigned competent witnesses, who hereunto sign their names as such with said appearer and me, Notary, after due reading of the whole.

/s/ Mary Ann Langley

WITNESSES:

/s/ Janet Tucker

/s/ Bix Williams

NOTARY PUBLIC

/s/ Danny (Illegible)

My commission expires: October 27, 1984.

TRACT II:

BORNE, CREWS, HONEYCUTT, AND LNB PROPERTIES: Two (2) certain tracts or parcels of ground, together with all buildings and improvements thereon and all rights, ways, servitudes and advantages thereunto belonging or in anywise appertaining, including all alluvion and batture, situated in the Parish of Pointe Coupee, State of Louisiana, being designated on a map made by Toxie Craft, C.E., dated August 31, 1967, entitled "Map Showing the survey of the John Barton Property being portions of Sections 16 through 25, T4S, R7E, Less the 20+ acre Vignes Tract, Sections 30 through 34, T4S, R7E, the South ½ of Section 41 and the North ½ of Section 42, T4S, R7E, less 2.06 acres in Lot 3 for Carmouche, and the South ½ of Section 80, T4S, R8E, all lying in Pointe Coupee Parish, Louisiana, for John W. Barton" recorded with an act of mortgage in MOB 69, Entry No. 56, of the Records of Pointe Coupee Parish, Louisiana on February 16, 1968, said property being located in Sec. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 41 and 42, T4S, R7E, and

Section 80, T4S, R8E, and being more particularly described as follows:

FIRST TRACT:

All of Sections 16, 17, 18, 19, 20 and 21, T4S, R7E, lying West of the center line of the dredged drainage canal running through said sections and East of the top of the bank of the Atchafalaya River, SAVE AND EXCEPT: 8.27 acres owned now or formerly by Transcontinental Gas Pipe Line Corporation in the Western portions of Sections 17, 18 and 19;

All of Sections 22 and 23, T4S, R7E, lying East of the top bank of the Atchafalaya River, SAVE AND EXCEPT: 20 acres owned now or formerly by Eddie Vignes in the Western portion of Sec. 23, and a 100-foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections;

All of Sections 24 and 25, T4S, R7E, lying East of the top of the bank of the Atchafalaya River and West of the lands in the Eastern portion of Sections 24 and 25 owned now or formerly by Sampson C. Smith, SAVE AND EXCEPT: a 100-foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections, and the Village of Red Cross, LA, in the Western portion of Section 25;

Two certain lots or parcels of ground, situated in that subdivision in Sec. 25, T4S, R7E, known as RED CROSS and designated as LOTS TWENTY-TWO (22) and TWENTY-THREE (23) on the official map of said subdivision recorded under Entry Number 27710, Conveyance Records of Pointe Coupee Parish, each of said lots fronting 50 feet on Kuhlman Street by the depth of 148.5 feet between parallel lines.

SECOND TRACT:

All of the South ½ of Section 41 and the North ½ of Section 42, T4S, R7E, SAVE AND EXCEPT: (1) 2.06 acres also known as Lot 3 owned now or formerly by Emile Carmouche on Louisiana Highway #10 in the Western portion of said half sections and (2) that portion of the southern ½ of the north ½ of Section 42 lying south of Louisiana Highway #10 containing 44.38 acres, more or less;

All of South ½ of Section 80, T4S, R8E.

Being a portion of the property acquired by Morrison Grain Company, Inc. and Morrison-Quirk Grain Corporation from Louisiana National Bank of Baton Rouge, Robert N. Crews, et al, Frank Gilbert Honneycutt, et ux and Violet Kuhlmann Borne, et al by acts of record in COB 60, Entry No. 501; COB 61, Entry No. 188, COB 61, Entry No. 119; and COB 61, Entry No. 94, respectively; and being part of the same property acquired by BARTON by act of record in COB 62, Entry No. 43; and being part of the same property acquired by ROGERS by act of record in COB 118, Entry No. 32; all of the official records of the Parish of Pointe Coupee, State of Louisiana.

The total acreage included in the tracts of land above described and herein mortgaged being 1628.4 acres.

Filed Sept. 26 1983

/s/ Shirley Graffia

Dy. Clerk

A True Copy

/s/ Shirley Graffia

Dy. Clerk

STATE OF LOUISIANA
PARISH OF POINTE COUPEE

I hereby certify that the foregoing is a true and correct copy of the ORIGINAL as the same appears on record in my office in Conveyence Book ____
Entry No. ____ , Mortgage Book 130 Entry No. 83
Chattel Mortgage ____ Entry No. ____ , Map Book ____
Map No. ____ Filed 12-23-80 @ 4:30 p.m.
Given under my hand and seal of office this the 19th
Sept. A.D. 1983

/s/ Sharon S. Warr, Dy.

Clerk and Ex-Officio Recorder

PROMISSORY NOTE
NEGOTIABLE PAPER Opelousas, La., March 8, 1982.

Bank No. 104638

For value received, we, the makers, endorsers, guarantors, sureties and all other parties hereto, and each of us, in solido, promise to pay to the order of

Due _____, 19 _____

$ 468,124.41

Planters Trust and Savings Bank

AT ITS BANKING OFFICE IN OPELOUSAS, LOUISIANA 70570

Four Hundred Sixty-eight Thousand One Hundred Twenty-four & 41/100 ---------- DOLLARS

payable in 3 annual installments of $104,164.54 inc. int. Dollars each, and one final installment sufficient to pay the balance due, the first installment being due and payable on the 8 day of March, 1983 and one installment being due and payable on the 8th day of each succeeding year thereafter until all have been paid, together with interest at the rate of *Prime + 2% per cent per annum from Date until paid.

Any failure on the part of the maker or makers to pay any installment of this note, or the interest thereon, promptly when due, shall ipso facto, and without any demand or putting in default, cause this note and each and every installment thereof to become immediately due and exigible.

The makers, endorsers, guarantors and sureties of this note, hereby severally waive presentment for payment, demand, protest and notice of protest and of non-payment and also all pleas of division and discussion, consent to all extensions hereof, and hereby agree and acknowledge that this is and shall be a solidary obligation.

This note and any extension and renewal thereof and any and every debt, liability or obligation, direct or contingent, due or to become due, whether now existing or hereafter arising, by the undersigned, or any of them, to the said PLANTERS TRUST & SAVINGS BANK of Opelousas, La., up to the sum of One Million, One Hundred thirty Thousand, Eight Hundred and Fifty Dollars ($1,130,850.00), are and shall be secured by the pledge of the securities or property listed and described as follows, viz.:

secured by collateral mortgage note dated December 19, 1980, in the amount of $500,000.00 covering 1,628.4 acres, more or less, in Pointe Coupee Parish, La. W. T. Langley (n/w $6,126,845.00)

and any substitution thereof or additions thereto, and all other securities or property or credits that may be in transit to or from said bank by mail or carrier, or that may now or hereafter be held by or left in possession or under control of said bank for any purpose whatsoever by any of the parties hereto, whether said securities or property or credits are held by or under the control of the said bank alone, or with others, or by any other person or corporation for account of said bank, either solely or with others. All parties hereto severally consent and agree that the property herein pledged may be exchanged or surrendered from time to time without notice to, or assent from, any party hereto, and without in any manner releasing or altering their obligations hereunder. In the event that this note is not paid at its maturity or in the event that the makers, endorsers or any party hereto, should fail in business or become insolvent or should apply to be adjudged a bankrupt or proceedings in involuntary bankruptcy be filed against them, or the appointment of a receiver should be filed against them, or any one of them, or application for respite be made, this note and every other debt, liability or obligation, direct or contingent, due by the undersigned, or any of them, to said bank shall immediately become due and payable without demand or notice or putting in default.

In case of non-payment of this note at its maturity, or when otherwise due, as herein provided, or in case of non-payment of any other debt, liability or obligation, direct or contingent, of the undersigned, or any of them, to the said bank, when due or demandable, the said bank or other holder hereof, is hereby irrevocably authorized to sell said securities or property or any part thereof, at public or private sale without recourse to judicial proceedings, and without either demand, appraisement, advertisement or notice of any kind, and, at its option, to become a purchaser at said public or private sale, or to acquire said securities or property, or any part thereof, at their market value, and said bank, or any other holder hereof, is hereby irrevocably authorized to make any transfers or deliveries to the purchaser or purchasers at such public or private sale of any securities or property herein pledged, and to apply the proceeds thereof (1) to the payment of all costs and commissions for selling; (2) to the

payment of this note in principal, interest and attorney's fees, as above stipulated, or to any other debt, liability or obligation, direct or contingent up to the amount hereinabove stated, then due or thereafter to become due to said bank by parties hereto, or any of them.

Should the securities or property herein pledged decline in value or become impaired, the undersigned, and each of them, hereby agree, within twenty-four hours from demand upon the undersigned, or any of them, to furnish and pledge additional securities or properties satisfactory to the holder of this note to cover such decline or impairment; and the failure or refusal of the undersigned, or any of them, to promptly furnish such additional securities or property, when so called for, shall at once mature this note and pledge and every other debt, liability or obligation, direct or contingent, due by the undersigned or any of them, to said bank.

Unless this note be paid at its maturity, or when otherwise due, as herein provided, any money, securities or property on deposit with, in possession or under the control of, or held by said bank for any purpose whatsoever, or in transit to or from said bank by mail or carrier, to the credit or for account of the undersigned, or any of them, may, at the option of the bank, be applied to the payment of this note, or any other debt, liability or obligation, direct or contingent, due or to become due, by the undersigned, or any of them, to the said bank. In the event that this note or any other debt, liability, or obligation, due by the undersigned, or any of them, to said bank, be placed in the hands of an attorney-at-law for collection, attorney's fees hereby fixed at 25 per cent additional on both principal and interest and secured by the pledge hereof shall be due thereon.

All parties hereto do hereby irrevocably authorize and empower said Bank, at any time, to collect and appropriate and apply to the payment and extinguishment hereof, the interest, dividends, or other income accruing and payable on any of the property pledged to secure the payment hereof, and to facilitate such collection, all parties hereto agree that any of said property may be transferred, at said Bank's option, to the name of said Bank, or its nominee, on the books of the Company issuing same.

Said bank may transfer this note and make delivery of the said collateral security or any part thereof to the transferee or transferrees, who shall thereupon have and become vested with all of the rights and powers held and possessed by said bank in respect thereof, and the

said bank shall thereafter be forever relieved and fully discharged of any liability or responsibility in the premises.

Any payments due hereunder may be anticipated before due date without penalty or fee.

P.O. Box 581,
Blytheville, Arkansas 72135
ADDRESS

TELEPHONE NUMBER

/s/ W. T. Langley
W. T. LANGLEY

/s/ Mary Ann Grimes Langley
MARY ANN GRIMES LANGLEY

NLY * Prime based on Planters Bank adjusted weekly

A.P.R.	AGE	A & H	CR. LIFE	EXP. DATE	LN. OFF.
PP +2				3-8-86	AJH

Filed Sept. 26 1983

/s/ Shirley Graffia
Dy. Clerk

A True Copy

/s/ Shirley Graffia
Dy. Clerk

/s/ W. T. Langley

8-16-83
Credit reversal $450.00 for Cashiers Ck. #54500 to Warren D. Rush, Attorney
7-13-83 Credit reversal $50.00 Cashiers Check #55013 issued to Warren Rush.

PLANTERS TRUST AND SAVINGS BANK	*	27TH JUDICIAL DISTRICT COURT
	*	
VERSUS	*	DOCKET NO. 90, 519-B
	*	
W. T. LANGLEY and MARY ANN GRIMES LANGLEY	*	ST. LANDRY PARISH, LOUISIANA

PETITION ON PROMISSORY NOTE

The petition of PLANTERS TRUST AND SAVINGS BANK, a state banking corporation with its principal place of business being located in Opelousas, St. Landry Parish, Louisiana, with respect represents:

I.

Defendants, W. T. LANGLEY and MARY ANN GRIMES LANGLEY, both residents of the full age of majority and domiciled in the County of Mississippi, Arkansas, are justly and truly indebted unto your petitioner jointly, severally and in solido for the following, to-wit:

II.

Promissory Note #104638, dated Opelousas, La., March 8, 1982, in the principal sum of $468,124.41, made payable to Planters Trust and Savings Bank at its banking office in Opelousas, Louisiana 70570, payable in three (3) annual installments of $104,164.54 each, including interest, and one final installment sufficient to pay the balance due, the first installment being due and payable on the 8th day of March, 1983 and one installment being due and payable on the 8th day of each succeeding year thereafter until all have been paid, together with interest to be computed at the rate more fully shown on such promissory note and as amended, said promissory note made and executed by W. T. Langley and Mary Ann Grimes Langley, through her agent and attorney-in-fact, W. T. Langley, as more fully shown by reference to the Power of Attorney dated December 16, 1980, being attached hereto and marked EXHIBIT "D" for identification herewith and made a part hereof by reference as though set forth herein in extenso, said note being attached hereto and marked EXHIBIT "A" for identification herewith and made a part hereof by

reference as though set forth herein in extenso, the principal balance due being $468,624.41, together with interest to September 15, 1983 in the principal sum of $127,476.99, and thereafter the additional sum of interest to be computed at the rate more fully shown on such promissory note and as amended, until the full amount of principal and interest is paid in full, as well as the additional sum of twenty-five (25) per cent as attorney's fees and all costs of this suit, said promissory note being secured by a pledge and assignment of the following collateral security, to-wit:

Collateral Mortgage Note dated Bunkie, La. December 19th, 1980, due ON DEMAND AND PAYABLE TO THE ORDER OF PLANTERS TRUST & SAVINGS BANK, Opelousas, LA., in the principal sum of FIVE HUNDRED THOUSAND AND NO/100 ($500,000.00) DOLLARS, bearing interest at the rate of twelve (12%) per cent per annum from date until paid, as well as the additional sum of twenty-five (25%) per cent as attorney's fees and all costs of this suit, said Collateral Mortgage Note being executed by W. T. Langley and Mary Ann Grimes Langley, through her agent and attorney-in-fact, W. T. Langley, as more fully shown by reference to the Power of Attorney dated December 16, 1980, being attached hereto and marked EXHIBIT "D" for identification herewith and made a part hereof by reference as though set forth herein in extenso, the said Collateral Mortgage Note being attached hereto and marked EXHIBIT "B" for identification herewith and made a part hereof by reference as though set forth herein in extenso, in turn being secured by a Collateral Mortgage of even date therewith for the same amount payable at Planters Trust & Savings Bank, a Louisiana banking corporation domiciled in Opelousas, LA., and being recorded in Mortgage Book 130, Entry No. 83, Pointe Coupee Parish Recorder's Office, a certified copy of such Collateral Mortgage being attached hereto and marked EXHIBIT "C" for identification herewith and made a part hereof by reference as though set forth herein in extenso.

II.

That the act of Collateral Mortgage attached hereto as EXHIBIT "C" specially mortgages, affects and hypothecates in favor of the Holder or Holders of the said Exhibit "B", which in turn secures Exhibit "A", the following described property, to-wit:

TRACT I.

Certain tracts or parcels of ground, together with all buildings and improvements thereon and all rights, ways, servitudes and advantages thereunto belonging or in anywise appertaining, including all alluvion and batture, situated in the Parish of Pointe Coupee, State of Louisiana, being more fully described as follows, to-wit:

All of Sections 16, 17, 18, 19, 20 and 21, Township 4 South, Range 7 East, lying West of the center line of the dredged drainage canal running through said sections and East of the top of the bank of the Atchafalaya River, SAVE AND EXCEPT: 8.27 acres owned now or formerly by Transcontinental Gas Pipe Line Corporation in the western portions of Sections 17, 18 and 19;

All of Sections 22 and 23, Township 4 South, Range 7 East, lying East of the top bank of the Atchafalaya River, SAVE AND EXCEPT: 20 acres owned now or formerly by Eddie Vignes in the Western portion of Section 23, and a one hundred (100') foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections;

All of Sections 24 and 25, Township 4 South, Range 7 East, lying East of the top of the bank of the Atchafalaya River and West of the lands in the Eastern portion of Sections 24 and 25 owned now or formerly by Sampson C. Smith, SAVE AND EXCEPT: a one hundred (100') foot strip of ground lying on the East bank of and adjacent to the dredged drainage canal running through said sections, and the Village of Red Cross, Louisiana, in the Eastern portion of Section 25;

Two certain lots or parcels of ground, situated in that subdivision in Section 25, Township 4 South, Range 7 East, known as RED CROSS and designated as LOTS TWENTY-TWO (22) and TWENTY-THREE (23) on the official map of said subdivision recorded under Entry Number 27710, Conveyance Records of Pointe Coupee Parish, Louisiana, each of said lots fronting fifty (50') feet on Kuhlman Street by a depth of 148.5 feet between parallel lines.

TRACT II.

Certain tracts or parcels of ground, together with all buildings and improvements thereon and all rights, ways, servitudes and advantages thereunto belonging or in anywise appertaining, including all alluvion and batture, situated in the Parish of Pointe Coupee, State of Lousiana, being more fully described as follows, to-wit:

All of the South ½ of Section 41 and the North ½ of Section 42, Township 4 South, Range 7 East, SAVE AND EXCEPT (1) 2.06 acres also known as Lot 3 owned now or formerly by Emile Carmouche on Louisiana Highway #10 in the Western portion of said half sections and (2) that portion of the southern ½ of the north ½ of Section 42 lying south of Louisiana Highway #10 containing 44.38 acres, more or less;

All of South ½ of Section 80, Township 4 South, Range 8 East.

Tract I and Tract II are a portion of the property acquired by Morrison Grain Company, Inc. and Morrison-Quirk Grain Corporation from Louisiana National Bank of Baton Rouge, Robert N. Crews, et al, Frank Gilbert Honneycutt, et ux and Violet Kulhmann Borne, et al, by acts of record in COB 60, Entry No. 501; COB 61, Entry No. 188, COB 61, Entry No. 119 and COB 61, Entry No. 94, respectively; and being part of the same property acquired by BARTON by act of record in COB 62, Entry No. 43; and being part of the same property acquired by ROGERS by act of record in COB 118, Entry No. 32 all of the official records of Pointe Coupee Parish, Louisiana.

The total acreage included in the tracts of land above described being 1628.4 acres.

All as in accordance with a map prepared by Toxie Craft, C. E. dated August 31, 1967, entitled "Map Showing the survey of the John Barton Property being portions of Section 16 trhough 25, Township 4 South, Range 7 East, LESS the 20+ acre Vignes Tract, Sections 30 through 34, Township 4 South, Range 7 East, the South ½ of Section 41 and the North ½ of Section 42, Township 4 South, Range 7 East, LESS 2.06 acres in Lot 3 for Carmouche, and the south ½ of Section 80, Township 4 South, Range 8 East, all lying in Pointe Coupee Parish, Louisiana, for John W. Barton" recorded with an act of

mortgage in MOB 69, Entry No. 56, of the Records of Pointe Coupee Parish, Louisiana, on February 16, 1968, said property being located in Sections 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 41 and 42, Township 4 South, Range 7 East, and Section 80, Township 4 South, Range 8 East, Pointe Coupee Parish, Louisiana.

III.

Petitioner further alleges that the said promissory note marked EXHIBIT "A" further provides that any failure on the part of the maker or makers to pay any installment thereof, or the interest thereon, promptly when due, shall ipso facto, and without any demand or putting in default, cause said note and each and every installment thereof to become immediately due and exigible and putting in default specially waived; that because of the non-payment of such promissory note marked Exhibit "A" in accordance with its tenor your petitioner elects to mature same including principal, interest, attorney's fees and all costs whatsoever and is entitled to judgment against defendants for the full amount of principal, interest, attorney's fees and all costs whatsoever, jointly, severally, and in solido on the aforesaid promissory note and in addition, that the Collateral Mortgage attached hereto as Exhibit "C" and recorded in Mortgage Book 130, Entry No. 83, Pointe Coupee Parish Recorder's Office, held by petitioner on the immovable properties described in Paragraph II hereinabove, be recognized by this Honorable Court as securing the full amount of petitioner's claim herein in the final judgment to be rendered by this Honorable Court, and that such immovable properties be ordered sold at public sale in accordance with law and that the proceeds from such sale be paid unto petitioner with preference and priority over all persons whomsoever up to the full amount of petitioner's claims herein, including principal, interest, attorney's fees and costs whatsoever.

IV.

That defendants are domiciled in the County of Mississippi, Arkansas; however, the transaction made the subject of this suit is a Louisiana transaction and defendant, W. T. LANGLEY, Individually and as agent and attorney-in-fact for defendant, MARY ANN GRIMES LANGLEY, was physically present in the State of Louisiana, negotiating such transaction, and accordingly, this Hon-

orable Court has jurisdiction over defendants pursuant to the Louisiana Long-Arm Statute, i.e. L.R.S. 13:3201.

Petitioner further avers that it is entitled to obtain from the Clerk of Court two certified copies of this petition for service on defendants pursuant to L.R.S. 13:3201 and 13:3203 as required by law.

WHEREFORE, premises considered, petitioner, PLANTERS TRUST AND SAVINGS BANK, prays that two certified copies of this petition be furnished to petitioner for use in serving defendants pursuant, to L.R.S. 13:3201; that after service of process with citation as required by law and all legal delays and due proceedings had, that judgment be rendered in favor of petitioner, PLANTERS TRUST AND SAVINGS BANK, and against defendants, W. T. LANGLEY and MARY ANN GRIMES LANGLEY, jointly, severally and in solido, in the principal sum of FOUR HUNDRED SIXTY-EIGHT THOUSAND SIX HUNDRED TWENTY-FOUR and 41/100 ($468,624.41) DOLLARS, together with interest to September 15, 1983 in the sum of ONE HUNDRED TWENTY-SEVEN THOUSAND FOUR HUNDRED SEVENTY-SIX AND 99/100 ($127,476.99) DOLLARS, and thereafter the additional sum of interest to be computed at the rate more fully shown on such promissory note and as amended, together with twenty-five (25%) per cent on the principal and interest as attorney's fees, and all costs whatsoever, and further, that the Collateral Mortgage attached hereto as Exhibit "C" and recorded in Mortgage Book 130, Entry No. 83, Pointe Coupee Parish Recorder's Office, held by petitioner on the immovable properties described in Paragraph II hereinabove, be recognized by this Honorable Court as securing the full amount of petitioner's claim herein in the final judgment to be rendered by this Honorable Court, and that such immovable properties be ordered sold at public sale in accordance with law and that the proceeds from such sale be paid unto petitioner with preference and priority over all persons whomsoever up to the full amount of petitioner's claims herein, including principal, interest, attorney's fees and costs whatsoever.

PETITIONER FURTHER PRAYS for all general and equitable relief.

Filed Sept. 26, 1983

/s/ Shirley Graffia
Dy. Clerk

/s/ Warren D. Rush
WARREN D. RUSH
Post Office Box 53713 OCS
Lafayette, Louisiana 70505
ATTORNEY FOR PETITIONER

A True Copy
Shirley Graffia
Dy. Clerk

PLANTERS TRUST AND SAVINGS BANK	*	27TH JUDICIAL DISTRICT COURT
	*	
VERSUS	*	DOCKET NO. 90, 519-B
	*	
W. T. LANGLEY and MARY ANN GRIMES LANGLEY	*	ST. LANDRY PARISH, LOUISIANA

ORDER

LET defendants herein, W. T. LANGLEY and MARY ANN GRIMES LANGLEY, be served with a certified copy of the Petition on Promissory Note, with citation, pursuant to L.R.S. 13:3201, et seq.

Opelousas, Louisiana, this 26 day of September, 1983.

s/ Joseph A. LaHaye
JUDGE

Filed: Sept. 26, 1983

Shirley Graffia

A True Copy

Dy. Clerk

CV84-0557
SEC L

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

W. T. LANGLEY and MARY ANN GRIMES LANGLEY

VERSUS

PLANTERS TRUST AND SAVINGS BANK OF OPELOUSAS, LOUISIANA, ROY E. CAUGHFIELD, and ELMER LANDRY

CIVIL ACTION NO. 83-1110

SECTION B

(JURY TRIAL DEMANDED)

COMPLAINT

COUNT ONE

The plaintiffs bring this Complaint against the defendants, and for their claim, respectfully show:

1.

Plaintiffs are residents of the full age of majority and are domiciled in the State of Arkansas.

2.

Planters Trust & Savings Bank of Opelousas, Louisiana, is a banking association organized and existing under the laws of Louisiana, and having its principal place of business in the Parish of St. Landry, Louisiana.

3.

Roy E. Caughfield is a resident of the State of Louisiana, and is domiciled in the Parish of St. Landry, Louisiana.

4.

Elmer Landry is a resident of the State of Louisiana, and is domiciled in the Parish of St. Landry, Louisiana.

5.

The amount in controversy, exclusive of interest and costs, exceeds TEN THOUSAND and NO/100 ($10,000.00) DOLLARS.

6.

Jurisdiction of this Court is based upon 28 U.S.C. 1331 and 28 U.S.C. 1332(a)(1).

7

On December 19, 1980, plaintiffs purchased from Leenerts Farms, Inc. certain property situated in Sections 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25, Township 4 South, Range 7 East, and in Sections 41, 42 and 80, Township 4 South, Range 8 East, Pointe Coupee Parish, Louisiana, purportedly totaling 1628.4 acres, all as more particularly described in an Act of Sale which is recorded in Conveyance Book 199, Entry No. 21, of the Official Records of Pointe Coupee Parish.

8.

The sales price which the plaintiffs agreed to pay for the property was ONE MILLION SIX HUNDRED THIRTY-FIVE THOUSAND and NO/100 ($1,635,000.00) DOLLARS.

9.

In connection with the purchase described above, plaintiffs executed a promissory note in the original principal amount of ONE MILLION THREE HUNDRED FIFTY THOUSAND ($1,350,000.00) DOLLARS, payable to the order of The Federal Land Bank of New Orleans, bearing interest at the rate described therein and payable in equal installments, which note was secured by a mortgage in favor of The Federal Land Bank of New Orleans, of even date therewith, covering and affecting the property hereinabove described. This mortgage is recorded in MOB 130, Entry No. 82, of the Official Records of Pointe Coupee Parish, Louisiana.

10.

In connection with the purchase of the property, plaintiffs also executed one certain collateral mortgage note payable to the order of Planters Trust & Savings Bank, Opelousas, Louisiana, in the original

principal amount of FIVE HUNDRED THOUSAND and NO/100 ($500,000.00) DOLLARS, which provides for no interest from date of execution until demand, and then bearing interest at the rate of twelve (12%) percent per annum from date until paid, or until one year after due date, whichever first occurs, which note was payable on demand. This note was secured by one certain collateral mortgage of even date therewith executed by the plaintiffs and covering and affecting the property described in Paragraph 7 hereinabove.

11.

In connection with the collateral mortgage note and mortgage described in the foregoing paragraphs, from time to time, plaintiffs have executed various "hand notes" evidencing the actual indebtedness of the plaintiffs to Planters Trust & Savings Bank. The actual debt which the above described collateral mortgage now secures is evidenced by that certain "hand note" dated March 8, 1982, in the principal amount of FOUR HUNDRED SIXTY-EIGHT THOUSAND ONE HUNDRED SIXTY-FOUR and 54/100 ($468,164.54) DOLLARS, purporting to bear interest at the rate of Planters Trust & Savings Bank's prime rate of interest plus two (2%) percent, from date until paid.

12.

The property was purchased in accordance with the terms and conditions of a purchase agreement between plaintiffs and Leenerts Farms, Inc. executed on October 3, 1980, which, in addition to other terms and conditions, provided that plaintiffs would be conveyed a one-half (½) interest in and to all mineral rights in the property owned by Leenerts, which had been previously represented as approximately 400 mineral acres as more particularized hereinbelow.

13.

Elmer Landry and Roy E. Caughfield, the latter, both individually and on behalf of Planters Trust & Savings Bank, made certain representations which led plaintiffs to believe that the mineral rights which were to be acquired by plaintiffs in connection with their purchase of the property were the rights of the landowner, Leenerts Farms, Inc.

14.

In truth and in fact, subsequent examination of the Conveyance Records of the Clerk and Recorder for the Parish of Pointe Coupee reveals that prior to execution of the purchase agreement described in Paragraph 12, Leenerts Farms, Inc. had conveyed all of its interest in the mineral rights in and to the property to Don I. Williams and Margaret Randolph Williams, a transaction totally unknown to and concealed from plaintiffs by defendants, Landry and Caughfield, the latter acting both individually and for and on behalf of Planters Trust & Savings Bank.

15.

On the date of the execution of the purchase agreement, Leenerts Farms, Inc. owned no mineral rights in and to the property described hereinabove, all of Leenerts' right, title and interest in same having been conveyed to Don I. Williams and Margaret Randolph Williams by Mineral Deed dated August 6, 1980, recorded in COB 109, Entry No. 22, of the Official Records of Pointe Coupee Parisn, Louisiana.

16.

On December 19, 1980, in purported compliance with the terms of the purchase agreement of October 3, 1980 with Leenerts Farms, Inc., plaintiffs were granted by Mineral Deed from Don I. Williams and Margaret Randolph Williams, "an undivided one-fourth (¼th) right, title and interest transferred to grantor herein by Leenerts Farms, Inc. in that certain assignment dated August 6, 1980. . .", in and to all of the oil, gas and other minerals in, on and under and that may be produced from the property.

17.

At the time of their purchase, plaintiffs were not aware of the existence of the Mineral Deed from Leenerts Farms, Inc. to Don I. Williams and Margaret Randolph Williams described in Paragraph 15 above, nor were plaintiffs aware of the existence of the Mineral Deed to them described in Paragraph 16 above as they were not parties signatory to this Mineral Deed and representations were made to them by Caughfield and Landry individually, and by Caughfield for and on behalf of Planters Trust & Savings Bank, that certain mineral rights would be transferred to the plaintiffs by Leenerts Farms, Inc. as more particularly detailed herein.

18.

The statements, claims, representations and inducements made by Caughfield and Landry individually, and by Caughfield for and on behalf of Planters Trust & Savings Bank were in some instances incorrect, misleading and fraudulently and knowingly made with the intention of convincing plaintiffs to buy the property without being possessed of all of the facts and information which defendants knew would be necessary for plaintiffs to consider in order to make a reasonable and prudent decision regarding the purchase and the terms and conditions thereof.

19.

Additionally, the defendants fraudulently and knowingly withheld certain facts and information necessary to make certain representations made by the defendants not misleading and without which plaintiffs could not make a reasonable and prudent decision whether or not to buy the Property and upon what terms and conditions.

20.

The facts and information so withheld were peculiarly within the control of defendants, and could not be ascertained by plaintiffs in any way other than by and through defendants.

21.

Plaintiffs purchased the property as a direct and proximate result of these statements, claims, representations, inducements and omissions of the defendant, Planters Trust and Savings Bank, acting by and through its President, Roy E. Caughfield, defendant Caughfield individually, and defendant, Landry, individually.

22.

The plaintiffs were induced to sign the promissory note of March 8, 1982, and all preceding notes described hereinabove as a direct result of the statements, claims, representations, inducements and omissions of the defendants, Caughfield and Landry individually, and Caughfield for and on behalf of Planters Trust & Savings Bank, regarding that which would be conveyed to the plaintiffs, the in rem nature of the loan, the interest rate to be charged and the terms of the loan, as well as other misrepresentations more particularly within the knowledge of the defendants.

23.

The defendants, Landry and Caughfield, the latter individually and for and on behalf of Planters Trust & Savings Bank, represented that no outstanding mineral leases burdened the property when in truth and in fact, there existed an outstanding mineral lease held by Chevron, U.S.A. and, furthermore, the executive rights were held by another third party, John Barton.

24.

When the plaintiffs purchased the property described in Paragraph 7 hereinabove, Pointe Coupee Parish was the scene of feverish leasing activities by various companies, the presence of the outstanding lease in favor of Chevron, U.S.A. on the property depriving the plaintiffs the opportunity to lease their land, and secure a bonus, delay rentals and royalties in excess of that provided for in the lease with Chevron, U.S.A.

25.

In November, 1980, the plaintiffs contracted to sell the property described in Paragraph 7 hereinabove to one June Lowery for a profit of FIVE HUNDRED FIFTY THOUSAND and NO/100 ($550,000.00) DOLLARS, who then refused to consummate the purchase for reasons unknown to the plaintiffs at that time, but upon information and belief, now believed to be the shortage of acreage and mineral rights.

26.

On March 16, 1982, the mineral interests in the property previously owned by Leenerts Farms, Inc. and transferred to Don I. Williams and Margaret Randolph Williams, as more particularly described in Paragraphs 14 and 15 hereinabove, were transferred from Don I. Williams and Margaret Randolph Williams to Roy E. Caughfield, a defendant herein.

27.

The plaintiffs seek declaratory relief herein declaring the promissory notes and mortgage of Planters Trust & Savings Bank unenforceable, null and void for failure or want of cause and error occurring as a result of the fraudulent misrepresentations, induce-

ments and omissions of the defendants or, alternatively, limiting enforcement of the notes and mortgage to the property itself.

COUNT II

28.

The plaintiffs reallege and reaffirm all of the allegations of Paragraphs 1 through 27 hereinabove.

29.

In the event the Court finds that the acts and omissions of defendants complained of herein were not fraudulent, knowing and intentional, alternatively, the plaintiffs aver that the claims, statements, representations, inducements and omissions of Landry and Caughfield individually, and Caughfield for and on behalf of Planters Trust & Savings Bank, were negligently and carelessly made or withheld, and as a direct and proximate result thereof, plaintiffs were induced to make the purchase of the property and sign "hand notes" in favor of Planters Trust & Savings Bank.

30.

Accordingly, the plaintiffs are entitled to the declaratory relief requested in Paragraph 27 hereof.

COUNT III

31.

The plaintiffs reallege and reaffirm all of the allegations of Paragraphs 1 through 30 hereof.

32.

Both alternatively to and in addition to the relief sought in Counts I and II of this Complaint, the plaintiffs seek damages from the defendants herein, Elmer Landry, Roy E. Caughfield and Planters Trust & Savings Bank, in solido, for the following and in the following amounts:

a) Shortage of surface acreage $200,000.00

b) Diminished delay rentals received upon lease of tract due to shortage of mineral acres	125,000.00
c) Bonus payments which could have been secured from lease of property	1,522,000.00
d) Value of mineral rights wrongfully withheld	3,000,000.00
e) Impairment of banking relationships, damage to reputation and loss of creditworthiness	250,000.00
TOTAL	$5,097,000.00

COUNT IV

33.

The plaintiffs reallege and reaffirm Paragraphs 1 through 32 hereof.

34.

The solicitation of the plaintiffs and the inducement of them to purchase the property described in Paragraph 7 hereinabove was a part of a scheme to rescue Planters Trust & Savings Bank from loans made to Leenerts Farms, Inc. which were in default, Leenerts Farms, Inc. filing for bankruptcy shortly after the purchase by the plaintiffs, and to generate for the defendants, Landry and Caughfield, certain "fees" and "commissions".

35.

In the furtherance of this scheme, the defendants utilized the United States mails and interstate telephonic communications.

36.

Accordingly, the defendants have engaged in a pattern of racketeering activity as prescribed by 18 U.S.C. 1961, et seq, in that they have repeatedly used the United States mails and other interstate communications to further their fraudulent scheme.

37.

The plaintiffs are entitled to recover treble damages herein, actual damages having been set forth in Paragraph 32 hereinabove, together with reasonable attorney's fees.

WHEREFORE, plaintiffs pray for trial by jury and after all due proceedings be had, that there be judgment herein, declaring the promissory notes and mortgage described hereinabove unenforceable, null and void, or alternatively, limiting enforcement of the notes and mortgages to the property itself, and further, both alternatively and in addition thereto, that there be judgment in favor of the plaintiffs, W. T. Langley and Mary Ann Grimes Langley, and against the defendants, Planters Trust & Savings Bank, Roy E. Caughfield and Elmer Landry, in the full and true sum of FIVE MILLION NINETY-SEVEN THOUSAND ($5,097,000.00) DOLLARS, that the same be trebled, reasonable attorney's fees three times the total, all with legal interest from date of judicial demand until paid, and all costs of these proceedings.

By Attorneys:

McCOLLISTER, McCLEARY & FAZIO
One American Place, Suite 1800
Post Office Box 2706
Baton Rouge, Louisiana 70821
Telephone: 504/387-5961

WILLIAM C. SHOCKEY, T.A.
and CHARLES W. SARTAIN

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

W. T. LANGLEY and MARY ANN GRIMES LANGLEY	CIVIL ACTION NO. 83-1110
	SECTION "B"
VERSUS	
PLANTERS TRUST AND SAVINGS BANK OF OPELOUSAS, LOUISIANA, ROY E. CAUGHFIELD, and ELMER LANDRY	(JURY TRIAL DEMANDED)

AMENDED COMPLAINT

The plaintiffs desire to amend the Complaint previously filed herein in various particulars, as more fully set forth hereinbelow.

COUNT ONE

1.

The plaintiffs desire to amend Paragraph 27 of the Original Complaint to read as follows:

"27.

The plaintiffs seek declaratory relief herein declaring the promissory notes and mortgage to Planters Trust & Savings Bank unenforceable, null and void for failure or want of cause and error occurring as a result of the fraudulent misrepresentations, inducements and omissions of the defendants, and ordering the cancellation of said mortgage described hereinabove from the public records of the Parish of Pointe Coupee or, alternatively, limiting enforcement of the notes and mortgage to the property itself."

2.

The plaintiffs desire to amend the prayer of the Original Complaint to read as follows:

"WHEREFORE, plaintiffs pray for trial by jury and after all

due proceedings be had, that there be judgment herein, declaring the promissory notes and mortgage described hereinabove unenforceable, null and void, and ordering the cancellation of said mortgage from the public records of the Parish of Pointe Coupee, State of Louisiana, or alternatively, limiting enforcement of the notes and mortgages to the property itself, and further, both alternatively and in addition thereto, that there be judgment in favor of the plaintiffs, W. T. Langley and Mary Ann Grimes Langley, and against the defendants, Planters Trust & Savings Bank, Roy E. Caughfield and Elmer Landry, in solido, in the full and true sum of FIVE MILLION, NINETY-SEVEN THOUSAND ($5,097,000.00) DOLLARS, that the same be trebled, together with reasonable attorney's fees, all with legal interest from date of judicial demand until paid, and all costs of these proceedings."

3.

As this amendment has been filed within twenty (20) days from service of the Original Complaint, leave of Court to file the same is not necessary.

WHEREFORE, the plaintiffs pray for all the relief requested in the prayer of the Original Complaint, as amended hereinabove.

By Attorneys:
McCOLLISTER, McCLEARY,
FAZIO & HOLLIDAY
One American Place, Suite 1800
Post Office Box 2706
Baton Rouge, Louisiana 70821
Telephone: 504/387-5961

WILLIAM C. SHOCKEY, T.A.
and CHARLES W. SARTAIN

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

W. T. LANGLEY and MARY ANN GRIMES LANGLEY	CIVIL ACTION NO. 83-1110
VERSUS	SECTION "B"
PLANTERS TRUST AND SAVINGS BANK OF OPELOUSAS, LOUISIANA, ROY E. CAUGHFIELD, and ELMER LANDRY	(JURY TRIAL DEMANDED)

SECOND AMENDED COMPLAINT

The plaintiffs desire to amend the Complaint previously filed herein, as previously amended in various particulars, as more fully set forth hereinbelow:

COUNT ONE

1.

The plaintiffs desire to amend the caption of the Original Complaint previously filed herein, to read as follows:

"UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

W. T. LANGLEY and MARY ANN GRIMES LANGLEY	CIVIL ACTION NO. 83-1110
VERSUS	SECTION "B"
PLANTERS TRUST AND SAVINGS BANK OF OPELOUSAS, LOUISIANA, ROY E. CAUGHFIELD, ELMER LANDRY, and THE FEDERAL LAND BANK OF NEW ORLEANS"	(JURY TRIAL DEMANDED)

2.

The plaintiffs desire to amend the Original Complaint by adding thereto a new paragraph to be designated as Paragraph 4A thereof, to read as follows:

"4A.

The Federal Land Bank of New Orleans is a federally chartered instrumentality of the United States of America established pursuant to Section 4 of the Federal Farm Loan Act, domiciled in the Parish of Orleans, of which Elmer Landry was an officer at all times pertinent herein."

3.

The plaintiffs desire to amend Paragraphs 13 and 14 of the Original Complaint to read as follows:

"13.

Elmer Landry, individually and on behalf of The Federal Land Bank of New Orleans, and Roy E. Caughfield, individually and on behalf of Planters Trust & Savings Bank, made certain representations which led plaintiffs to believe that the mineral rights which were to be acquired by plaintiffs in connection with their purchase of the property were the rights of the landowner, Leenerts Farms, Inc.

14.

In truth and in fact, subsequent examination of the Conveyance Records of the Clerk and Recorder for the Parish of Pointe Coupee reveals that prior to execution of the purchase agreement described in Paragraph 12, Leenerts Farms, Inc. had conveyed all of its interest in the mineral rights in and to the property to Don I. Williams and Margaret Randolph Williams, a transaction totally unknown to and concealed from plaintiffs by defendants, Landry and Caughfield, Landry acting individually and for and on behalf of The Federal Land Bank of New Orleans, and Caughfield acting individually and for and on behalf of Planters Trust & Savings Bank."

4.

The plaintiffs desire to amend Paragraphs 17 and 18 of the Original Complaint, as previously amended, to read as follows:

"17.

At the time of their purchase, plaintiffs were not aware of the existence of the Mineral Deed from Leenerts Farms, Inc. to Don I. Williams and Margaret Randolph Williams described in Paragraph 15 above, nor were plaintiffs aware of the existence of the Mineral Deed to them described in Paragraph 16 above as they were not parties signatory to this Mineral Deed and representations were made to them by Caughfield and Landry individually, by Landry for and on behalf of The Federal Land Bank of New Orleans, and by Caughfield for and on behalf of Planters Trust & Savings Bank, that certain mineral rights would be transferred to the plaintiffs by Leenerts Farms, Inc. as more particularly detailed herein.

18.

The statements, claims, representations and inducements made by Caughfield and Landry individually, by Landry for and on behalf of The Federal Land Bank of New Orleans, and by Caughfield for and on behalf of Planters Trust & Savings Bank were in some instances incorrect, misleading and fraudulently and knowingly made with the intention of convincing plaintiffs to buy the property without being possessed of all of the facts and information which defendants knew would be necessary for plaintiffs to consider in order to make a reasonable and prudent decision regarding the purchase and the terms and conditions thereof."

5.

The plaintiffs further desire to amend Paragraphs 21, 22, and 23 of the Original Complaint, to read as follows:

"21.

Plaintiffs purchased the property as a direct and proximate result of these statements, claims, representations, inducements and omissions of the defendant, Planters Trust and Savings Bank, acting by and through its President, Roy E. Caughfield, defendant Caughfield, individually, and defendant, Landry, individually, and for and on behalf of The Federal Land Bank of New Orleans.

22

The plaintiffs were induced to sign the promissory note of March 8, 1982, and all preceding notes described hereinabove as a direct result of the statements, claims, representations, inducements and omissions of the defendants, Caughfield and Landry individually, by Landry for and on behalf of The Federal Land Bank of New Orleans, and by Caughfield for and on behalf for and on behalf of Planters Trust & Savings Bank, regarding that which would be conveyed to the plaintiffs, the in rem nature of the loan, the interest rate to be charged and the terms of the loan, as well as other misrepresentations more particularly within the knowledge of the defendants.

23.

The defendants, Landry and Caughfield, individually, Landry for and on behalf of The Federal Land Bank of New Orleans, and Caughfield for and on behalf of Planters Trust & Savings Bank, represented that no outstanding mineral leases burdened the property when in truth and in fact, there existed an outstanding mineral lease held by Chevron, U.S.A. and, furthermore, the executive rights were held by another third party, John Barton."

6.

The plaintiffs further desire to amend the Original Complaint by amending Paragraph 27 thereof, as previously amended, to read as follows:

"27.

The plaintiffs seek declaratory relief herein declaring the promissory notes and mortgage to Planters Trust & Savings Bank and The Federal Land Bank of New Orleans unenforceable, null and void for failure or want of cause and error occurring as a result of the fraudulent misrepresentations, inducements and omissions of the defendants, and ordering the cancellation of said mortgages described hereinabove from the public records of the Parish of Pointe Coupee or, alternatively, limiting enforcement of the notes and mortgages to the property itself."

COUNT TWO

7.

The plaintiffs further desire to amend Paragraph 29 of the Original Complaint to read as follows:

"29.

In the event the Court finds that the acts and omissions of defendants complained of herein were not fraudulent, knowing and intentional, alternatively, the plaintiffs aver that the claims, statements, representations, inducements and omissions of Landry and Caughfield individually, by Landry for and on behalf of The Federal Land Bank of New Orleans, and by Caughfield for and on behalf of Planters Trust & Savings Bank, were negligently and carelessly made or withheld, and as a direct and proximate result thereof, plaintiffs were induced to make the purchase of the property and sign notes and mortgages in favor of Planters Trust & Savings Bank and The Federal Land Bank of New Orleans."

COUNT THREE

8.

The plaintiffs further desire to amend the Original Complaint previously filed herein by amending Paragraph 32 thereof to read as follows:

"32.

Both alternatively to and in addition to the relief sought in Counts I and II of this Complaint, the plaintiffs seek damages from the defendants herein, Elmer Landry, Roy E. Caughfield, The Federal Land Bank of New Orleans and Planters Trust & Savings Bank, in solido, for the following and in the following amounts:

a) Shortage of surface acreage	$200,000.00
b) Diminished delay rentals received upon lease of tract due to shortage of mineral acres	125,000.00
c) Bonus payments which would have been secured from lease of property	1,522,000.00

d) Value of mineral rights wrongfully withheld	3,000,000.00
e) Impairment of banking relationships, damage to reputation and loss of creditworthiness	250,000.00
TOTAL	$5,097,000.00''

9.

The plaintiffs desire to amend the prayer of the Original Complaint, as previously amended, to read as follows:

''WHEREFORE, plaintiffs pray for trial by jury and after all due proceedings be had, that there be judgment herein, declaring the promissory notes and mortgages described hereinabove unenforceable, null and void, and ordering the cancellation of said mortgages from the public records of the Parish of Pointe Coupee, State of Louisiana, or alternatively, limiting enforcement of the notes and mortgages to the property itself, and further, both alternatively and in addition thereto, that there be judgment in favor of the plaintiffs, W. T. Langley and Mary Ann Grimes Langley, and against the defendants, Planters Trust & Savings Bank, The Federal Land Bank of New Orleans, Roy E. Caughfield and Elmer Landry, in solido, in the full and true sum of FIVE MILLION NINETY-SEVEN THOUSAND ($5,097,000.00) DOLLARS, that the same be trebled, together with reasonable attorney's fees, all with legal interest from date of judicial demand until paid, and all costs of these proceedings.''

WHEREFORE, the plaintiffs pray for all of the relief requested in the prayer of the Original Complaint, as amended.

By Attorneys:
McCOLLISTER, McCLEARY,
FAZIO & HOLLIDAY
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Telephone: 504/387-5961

WILLIAM C. SHOCKEY, T.A.
and CHARLES W. SARTAIN

RECEIVED
MAY 25, 1984
F. D. I. C.
MEMPHIS, TN

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

Memphis *Region* Regular *Examination* *Certificate Number* 11791-9

PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS

OPELOUSAS ST. LANDRY LOUISIANA

Examiner-In-Charge Jerry Sumrall *Examined Close of Business* April 6, 1884

Concurrent with State Examiner-In-Charge Malcolm J. Domingue

REPORT OF EXAMINATION

THIS REPORT OF EXAMINATION IS STRICTLY CONFIDENTIAL

This report of examination has been made by an examiner appointed by the Board of Directors of the Federal Deposit Insurance Corporation for use in the supervision of the bank. The information contained in this report is based upon the books and records of the bank, upon statements made to the Examiner by directors, officers, and employees, and upon information obtained from other sources believed to be reliable.

It is recommended that each director, in accordance with his responsibilities both to depositors and to shareholders, thoroughly review the report. In making this review, it should be kept in mind that while an examination includes some audit tests, it is not to be construed as an audit, and this report should not be considered an audit report.

This copy of the report is the property of the Federal Deposit Insurance Corporation and is furnished to the bank examined for its confidential use. Under no circumstances shall the bank, or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof. If a subpoena or other legal process is received calling for production of this report, the Regional Office of the Federal Deposit Insurance Corporation should be notified immediately. The attorney at whose instance the process was issued and, if necessary, the court which issued it, should be advised of these restrictions and referred to Part 309 of the Federal Deposit Insurance Corporation Rules and Regulations.

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICER'S QUESTIONNAIRE | NUMBER 11791-9

WARREN D. RUSH
ATTORNEY AT LAW
PINHOOK TOWER, SUITE 901
2014 PINHOOK ROAD
LAFAYETTE, LOUISIANA
70508

TELEPHONE
Dial 225-2425

MAILING ADDRESS
P.O. BOX 53713, O.C.S.
LAFAYETTE, LA 70505

March 1, 1984

Cooper & Lybrand
2700 Canal Place One
New Orleans, Louisiana 70130

RE: Planters Trust and Savings Bank

Gentlemen:

Pursuant to the request of our client, Planters Trust and Savings Bank, we submit herewith the requested information relative to your examination of the financial statements of our client for the year ending December 31, 1983.

PENDING OR THREATENED LITIGATION

There are presently pending the following:

Officer's name and Title	Bank's Name and Location *(City and State)*
Kenneth A. Back Executive Vice President	Planters Trust and Savings Bank Opelousas, LA 70570
Officer's Signature	**Date**
/s/Kenneth A. Back	April 30, 1984

This is an official document. Any false information contained in it may be grounds for prosecution and may be punishable by fine or imprisonment.

FDIC 6300/37(10-82)

OFFICER'S QUESTIONNAIRE	NUMBER 11791-9

Cooper & Lybrand
March 1, 1984
Page Two

2. "Planters Trust and Savings Bank v. W. T. Langley and Mary Ann Grimes Langley", filed September 26, 1983 under Docket No. 90519-B of the 27th Judicial District Court in and for the Parish of St. Landry, Louisiana is a suit on a promissory note in the principal amount of $468,124.41 together with interest to September 15, 1983 in the sum of $127,476.99 and thereafter at the additional rate of Planters Bank Prime (adjusted weekly) plus 2% until the full amount of principal and interest is paid, plus 25% attorney fees and all costs of the suit. The defendants had the case removed to the U. S. District Court, Western District of Louisiana on October 20, 1983 and it is docketed as Case No. 83-2612. In addition, the defendants filed suit entitled "W. T. Langley, et al v. Planters Trust and Savings Bank of Opelousas, Louisiana, Roy E. Caughfield and Elmer Landry" on October 19, 1983 under Docket No. CA-83-1110-B, U. S. District Court, Middle District of Louisiana. This is a suit for damages arising from alleged misrepresentations to the Langleys which induced them to go through with the purchase of property from Leenerts Farms, Inc. There are also allegations of racketeering activity as prescribed by 18 USC 1961, et seq. The asserted damages are for $5,000,000.00, subject to being tripled by penalty provisions in 18 USC 1961, et seq. The second suit has further been expanded to include the Federal Land Bank as a party defendant and there is comtemplation of one or more third parties being brought into the matter. The Court in the Middle District of Louisiana has just ruled on a Motion to Transfer that case to the Western District of Louisiana. Transfer should be completed very shortly and the two cases will more than likely be consolidated. Both cases are currently in the early stages of discovery. However, it is our opinion that Planters will prevail in both suits. It is believed that the second suit was filed in order to delay Planters' foreclosure of its second mortgage (the goal of the first suit) and to forestall an expected foreclosure proceeding by the Federal Land Bank.

Officer's Name and Title	Bank's Name and Location *(City and State)*
Kenneth A. Back Executive Vice President	Planters Trust and Savings Bank Opelousas, LA 70570
Officer's Signature	**Date**
/s/Kenneth A. Back	April 30, 1984

This is an official document. Any false information contained in it may be grounds for prosecution and may be punishable by fine or imprisonment.

FDIC 6300/37(10-82)

11791-9

ASSETS SUBJECT TO ADVERSE CLASSIFICATION

AMOUNT	DESCRIPTION AND COMMENTS	DELINQUENCY			CLASSIFICATIONS		
		DATE OR NO OF PAYMENTS	A P	AMOUNT	SUBSTANDARD	DOUBTFUL	LOSS
470		3-8-83	A	470		470	

LANGLEY, W. T. Non-accrual
Blytheville, Arkansas
This credit originated at this bank in December of 1980, at $455M. Proceeds of $353M were used as part of the purchase price of 1,628.4 AL in Pointe Coupee Parish from Leenerts Farms, Inc. The balance of the funds used to purchase the property were lent by the Federal Land Bank. Mr. Langley apparently used none of his own money in the transaction. Balance of loan proceeds at this bank were used to purchase a certificate of deposit. Subsequently the debt was increased to $482,560.96 when interest was added. Apparently at some point a principal payment of $61M was made with the line increased subsequently. On 3-8-82 the debt was renewed at $468,174, repayable $104,165 per annum beginning 3-8-83. The first payment was never made. Accrued interest has been charged off with the debt placed on non accrual.

Collateral is a second mortgage on the 1,628.4 AL purchased. Reportedly the Federal Land Bank is owed $1,429M and they are apparently going to foreclose. Management stated the prior lien is too large to protect the bank's junior lien position and the debt is therefore basically unsecured at this time. There is no current PS in file on Mr. Langley and his financial condition is subject to considerable doubt at this time. PS dated 12-31-82 reflected (on a cost basis) TL of $3,640M with NW of $2,009M. Major asset was farm land which he valued at $3,456M (estimated value $6,179M) with debt against RE approximating its stated cost value. He showed cash of $245M and investment in Langley Auto Sales at $331.7M. This value was not supported.

The bank is suing the borrower and he has counter sued the bank, reportedly alleging that the property he purchased was not as represented to be and apparently feels the bank participated in this. As stated, little is known about the borrower's present financial condition and his assets for the most part are located out-of-state. He may have taken steps to remove his assets from personal ownership in an attempt to become "judgment-proof". At this point the collectibility of the credit is ~~extremely~~ questionable and is classified accordingly.

jmb

CHANGES IN EQUITY CAPITAL AND RESERVES		NUMBER 11791-9	
DATE	DESCRIPTION	DEBIT	CREDIT
	NONOPERATING CREDITS AND CHARGES		
	SECURITIES GAINS AND LOSSES		
8-15-83	W. T. Langley	73	

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

W. T. LANGLEY, ET UX	:	CIVIL ACTION NUMBER
	:	84-0555-L
VERSUS	:	
	:	
PLANTERS TRUST &	:	FIRST INTERROGATORIES OF
SAVINGS BANK OF	:	LAND BANK OF NEW ORLEANS
OPELOUSAS, ET AL	:	TO PLAINTIFFS

TO: Mr. William C. Shockey
MCCOLLISTER, MCCLEARY, FAZIO & HOLLIDAY
P. O. Box 2706
Baton Rouge, LA 70821

Now comes defendant, Federal Land Bank of New Orleans, and propounds the following interrogatories to plaintiffs, W. T. Langley and Mary Ann Grimes Langley:

DEFINITIONS

"You" and "your" means plaintiff and all representatives or other persons acting on their behalf, including but not limited to their attorney.

"Document" or "documents" means any written, printed, recorded or graphic matter, photographic matter or sound reproduction, including but not limited to any letters, memoranda, telegraphs, handwritten notes, periodicals, pamphlets, reports, records, orders, trust receipts, invoices, study working papers, diaries, charts, papers, graphs, indexes, data sheets, data processing cards, or any other writing however produced or reproduced or any tape, wire or other electrical sound recording.

"Identify," when used herein in connection with the natural person, means to state his full name, his business title, if any, his last known address and his employer, and each of his positions during the applicable period.

"Identify," when used in connection with a business concern, means to state the name and address of the firm, partnership, association or corporation.

"Identify," when used in reference to a document, means to state its date, its author, the type of document (e.g., a letter, memoran-

dum, telegraph, chart, photograph, sound reproduction, etc.) or, if the above information is not available, some other means of identifying it, and its present location and the identity of its present custodians. If any such document was but is no longer in your possession or subject to your control, or in existence, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred, voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding the authorization for such disposition thereof and state the date or approximate date thereof. In lieu of such information, you may attach to your answers a copy of each document.

INTERROGATORY NO. 1: In Paragraph 13 of your complaint, as amended, you allege that Elmer Landry and Roy E. Caughfield made certain representations.

(A) State precisely and in complete detail each representation made by Elmer Landry, when each alleged representation was made, how it was made, where it was made and in whose presence it was made.

(B) State precisely and in complete detail each representation made by Roy E. Caughfield, when each alleged representation was made, how it was made, where it was made and in whose presence it was made.

(C) Identify each and every person whom you believe has knowledge of relevant facts to support the allegations of Paragraph 13 of your complaint, as amended, and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(D) Identify all documents which you believe support or are otherwise relevant to the allegations of Paragraph 13 of your complaint, as amended.

INTERROGATORY NO. 2: With respect to the allegations in Paragraph 14 of your complaint, as amended, please provide the following information:

(A) State when and identify by whom the "subsequent examination of the Conveyance Records of the Clerk and Recorder for the Parish of Pointe Coupee" was made.

(B) Detail and explain all material facts which you believe support or are otherwise relevant to the allegation that Landry and Caughfield concealed information from plaintiffs.

(C) Identify each and every person whom you believe has knowledge of relevant facts to support this allegation and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(D) Identify all documents which you believe support or are otherwise relevant to this allegation.

INTERROGATORY NO. 3: Are the representations referred to in Paragraph 17 of your complaint, as amended, different from the representations alleged in Paragraph 13 of your complaint, as amended? If so,

then with respect to the representations alleged in Paragraph 17, give the same information requested in Interrogatory No. 1:

INTERROGATORY NO. 4: In connection with the negotiation and purchase of the property from Leenerts Farms, Inc., were plaintiffs, or either of them, represented by legal counsel or did they consult with legal counsel or did they seek advice from any other person?

(A) If so, identify each and every attorney who represented plaintiffs in connection with any aspect of said transaction.

(B) Identify any other attorney who was consulted by plaintiffs, or either of them, with respect to any aspect of the transaction.

(C) Identify any attorney who conducted a title examination or rendered a title opinion in connection with the purchase of the property.

(D) Identify each and every other person who was consulted by plaintiffs or from whom plaintiffs sought advice with respect to the negotiation and purchase of the property.

INTERROGATORY NO. 5: Do the allegations contained in Paragraph 18 of the complaint, as amended, refer to any statements, claims, representations and inducements allegedly made by Caughfield and Landry which have not been fully disclosed in response to Interrogator-

ies No. 1 and No. 3 above. If so, with respect to each such statement, claim, representation or inducement, provide the information requested in Interrogatory No. 1.

INTERROGATORY NO. 6: With respect to the allegations in Paragraph 18 of your complaint, as amended, that certain statements, claims, representations and inducements "were in some instances incorrect, misleading and fraudulently and knowingly made," please give the following information with respect to each alleged statement, claim, representation or inducement:

(A) Detail and explain all material facts which you believe support or are otherwise relevant to the allegations that such statement, claim, representation or inducement was incorrect, misleading, and fraudulently and knowingly made.

(B) Identify each and every person whom you believe has knowledge of relevant facts to support that allegation, and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(C) Identify all documents which you believe support or are otherwise relevant to this allegation.

INTERROGATORY NO. 7: With respect to the allegations contained in Paragraph 19 of your complaint, please give the following information:

(A) State precisely and in detail what facts and information was fraudulent and knowingly withheld from plaintiffs.

(B) Detail and explain all material facts which you believe support or are otherwise relevant to the allegations of Paragraph 19 of your complaint.

(C) Identify each and every person whom you believe has knowledge of relevant facts to support these allegations, and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(D) Identify all documents which you believe support or are otherwise relevant to this allegation.

INTERROGATORY NO. 8: With respect to the allegations contained in Paragraph 20 of your complaint, please give the following information:

(A) Detail and explain all material facts which you believe support or are otherwise relevant to the allegation that the facts and information allegedly withheld were particularly within the control of defendants and could not be ascertained by plaintiffs in any other way than by and through defendants.

(B) Identify each and every person whom you believe has knowledge of relevant facts to support these allegations, and give brief

summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(C) Identify all documents which you believe support or are otherwise relevant to these allegations.

INTERROGATORY NO. 9: With respect to the allegations contained in Paragraph 21 of your complaint, please give the following information:

(A) Detail and explain all material facts which you believe support or are otherwise relevant to the allegations of this paragraph.

(B) Do the allegations of Paragraph 21 of the complaint, as amended, refer to any statements, claims, representations, inducements and omissions which have not been fully disclosed to previous interrogatories? If so, with respect to each such statement, claim, representation, inducement or omission, please give the information requested in Interrogatory No. 1.

INTERROGATORY NO. 10: With respect to the allegations contained in Paragraph 22 of your complaint, please give the following information:

(A) Detail and explain all material facts which you believe support or are otherwise relevant to the allegations of this paragraph.

(B) Do the allegations of Paragraph 22 of the complaint, as amended, refer to any statements, claims, representations, inducements and omissions which have not been fully disclosed to previous interrogatories? If so, with respect to each such statement, claim, representation, inducement or omission, please give the information requested in Interrogatory No. 1.

INTERROGATORY NO. 11: With respect to the allegations contained in Paragraph 23 of your complaint, please give the following information:

(A) Detail and explain all material facts which you believe support or are otherwise relevant to the allegations of this paragraph.

(B) Do the allegations of Paragraph 23 of the complaint, as amended, refer to any statements, claims, representations, inducements and omissions which have not been fully disclosed to previous interrogatories? If so, with respect to each such statement, claim, representation, inducement or omission, please give the information requested in Interrogatory No. 1.

INTERROGATORY NO. 12: With respect to the allegations of Paragraph 25 of your complaint, concerning the contract to sell to June Lowery, please give the following information:

(A) Detail and explain all material

facts which you believe support or are otherwise relevant to the allegation that this sale was not consummated due to a shortage of acreage and mineral rights.

(B) Identify each and every person whom you believe has knowledge of relevant facts to support this allegation, and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(C) Identify all documents which you believe support or are otherwise relevant to this allegation.

INTERROGATORY NO. 12: With respect to the alleged transfer of mineral interest from Don I. Williams and Margaret Randolph Williams to Roy E. Caughfield, as alleged in Paragraph 26 of your complaint, please give the following information:

(A) Detail and explain all material facts which you believe support or are otherwise relevant to this allegation.

(B) Identify each and every person whom you believe has knowledge of relevant facts to support this allegation, and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(C) Identify all documents which you believe support or are otherwise relevant to this allegation.

INTERROGATORY NO. 13: With respect to the allegation of Paragraph 27 of the complaint, as amended, are you alleging any fraudulent misrepresentation, inducement or omission which has not been fully disclosed to previous interrogatories? If so, with respect to each such misrepresentation, inducement and omission, please give the information requested in Interrogatory No. 1.

INTERROGATORY NO. 14: Fully itemize and explain how you computed each item of damage alleged in Paragraph 32 of the complaint, and give the following information:

(A) Detail and explain all material facts which you believe support or are otherwise relevant to each item of damage.

(B) Identify each and every person whom you believe has knowledge of relevant facts to support each item of damage, and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(C) Identify all documents which you believe support or are otherwise relevant to each item of damage.

INTERROGATORY NO. 15: With respect to the allegations of Paragraph 34 of a "scheme," please give the following information:

(A) Detail and explain all material facts which you believe support

or are otherwise relevant to this allegation.

(B) Identify each and every person whom you believe has knowledge of relevant facts to support this allegation, and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(C) Identify all documents which you believe support or are otherwise relevant to this allegation.

INTERROGATORY NO. 16: With respect to the allegations of Paragraph 34 that certain "fees" and "commissions" were generated for the defendants, please give the following information:

(A) Identify each fee and commission which was generated for the defendants, or either of them, or which the defendants intended to generate, such identification to include the alleged amount of each fee or commission, the date it was paid, by whom it was paid, to whom it was paid, how it was paid and what was the consideration for the payment.

(B) Detail and explain any other material facts which you believe support or are otherwise relevant to this allegation.

(C) Identify each and every person whom you believe has knowledge of relevant facts to support this allegation, and give brief summaries of the testimony

which you believe each person would give if called as a witness at the trial of this case.

(D) Identify all documents which you believe support or are otherwise relevant to this allegation.

INTERROGATORY NO. 17: With respect to the allegations of Paragraph 35 that the defendants utilized the United States Mails and interstate telephonic communications, and with respect to each use of such mails or such telephonic communications, please give the following information:

(A) Fully describe and identify by date, content and parties each such use of the mails and interstate telephonic communications.

(B) Identify each and every person whom you believe has knowledge of relevant facts to support these allegations, and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(C) Identify all documents which you believe support or are otherwise relevant to this allegation.

INTERROGATORY NO. 18: With respect to the allegations of Paragraph 6 of your complaint, describe fully and in detail the facts upon which you rely to establish a pattern of racketeering activity.

INTERROGATORY NO. 19: With respect to the allegations of Paragraphs 13, 14, 17, 18, 21, 22, 23

and 29 of the complaint, as amended, that Elmer Landry was acting "for and on behalf of the Federal Land Bank of New Orleans", please give the following information:

(A) Detail and explain all material facts which you believe support or are otherwise relevant to this allegation.

(B) Identify each and every person whom you believe has knowledge of relevant facts to support this allegation, and give brief summaries of the testimony which you believe each person would give if called as a witness at the trial of this case.

(C) Identify all documents which you believe support or are otherwise relevant to this allegation.

Of Counsel:

William W. Abbott, Jr.
David Amoni
Federal Land Bank of
New Orleans
P.O. Box 50590
New Orleans, LA 70150-0590

By Attorneys,

TAYLOR, PORTER, BROOKS & PHILLIPS

By: W. S. McKenzie
Fredrick R. Tulley
P. O. Drawer 2471
Baton Rouge, Louisiana 70821-2471
Telephone (504) 387-3221

- CERTIFICATE -

I certify that a copy of the foregoing was this day mailed, postage prepaid, to all counsel of record.

Baton Rouge, Louisiana, this 26 day of April, 1984.

/s/ W. S. McKenzie

W. S. McKenzie

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

PLANTERS TRUST & SAVINGS BANK
VERSUS
W. T. LANGLEY, and
MARY ANN GRIMES LANGLEY

CIVIL ACTION NO. CV-83-2612
SECTION "L"

ANSWER

NOW INTO COURT, through undersigned counsel, come the defendants in these proceedings, W. T. Langley and Mary Ann Grimes Langley, who for answer to the Petition of Planters Trust & Savings Bank, respectfully represent:

1.

W. T. Langley and Mary Ann Grimes Langley admit that they are residents of the full age of majority and domiciled in the County of Mississippi, State of Arkansas. All other allegations of Paragraph 1 of the original Petition are denied.

2.

W. T. Langley and Mary Ann Grimes Langley admit that they signed Promissory Note #104638 and the Collateral Mortgage Note described in Paragraph II of the Petition. All other allegations of Paragraph II of the Petition (the first paragraph so designated) are denied for lack of knowledge sufficient to justify a belief in the truth thereof.

3.

The allegations of Paragraph II (the second paragraph so designated) of the Petition are admitted.

4.

The allegations of Paragraph III of the Petition are denied.

5.

The allegations of Paragraph IV of the Petition are admitted.

6.

The allegations of Paragraph V of the Petition are admitted.

WHEREFORE, These defendants, W. T. Langley and Mary Ann Grimes Langley, pray that this Answer be deemed good and sufficient and after all due proceedings be had, that there be judgment herein in their favor, rejecting the demands of the plaintiff, Planters Trust & Savings Bank, at its costs.

By Attorneys:

McCOLLISTER, McCLEARY, FAZIO
& HOLLIDAY
One American Place, Suite 1800
Post Office Box 2706
Baton Rouge, Louisiana 70821
Telephone: 504/387-5961

/s/ William C. Shockey

WILLIAM C. SHOCKEY, T.A.,
and CHARLES W. SARTAIN

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of May, 1984, I served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by U.S. Mail, properly addressed and first class postage prepaid.

/s/ William C. Shockey

WILLIAM C. SHOCKEY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

PLANTERS TRUST & SAVINGS BANK	:	CIVIL ACTION NO. 83-2612-D
VERSUS	:	
W. T. LANGLEY AND MARY ANN GRIMES LANGLEY	:	
W. T. LANGLEY, ET UX	:	CIVIL ACTION NO. 84-0555-L
VERSUS	:	
PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, ET AL	:	

ANSWER TO PLAINTIFFS' ORIGINAL, AMENDED AND SECOND AMENDED COMPLAINTS BY DEFENDANTS, PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA. AND ROY E. CAUGHFIELD

NOW INTO COURT, through undersigned counsel, comes PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA. and ROY E. CAUGHFIELD, sought to be made the defendants in Civil Action No. 84-0555-L, captioned above, who, for answer to the allegations of plaintiffs' Complaint, Amended and Second Amended Complaint, respectfully represents:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted against these defendants, PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA. and ROY E. CAUGHFIELD, for the following reasons:

Count One. With respect-to PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA., plaintiffs seek a declaration that a loan and mortgage securing same in the amount of Four Hundred

Sixty Eight Thousand One Hundred Sixty Four and 54/100 ($468,164.54) Dollars allegedly made in connection with plaintiffs' purchase of certain property be declared null and void or, alternatively, be limited to an in rem obligation, but plaintiffs have neither sought to nullify the sale nor tender back the funds advanced by Planters Trust & Savings Bank of Opelousas, La. Plaintiffs have no right to retain the benefits of the alleged transaction and at the same time seek to nullify the obligation which arose therefrom.

Count Two. For the reasons set forth with respect to Count One, Count Two fails to state a claim against these defendants.

Count Three. The complaint fails to state any legal basis upon which plaintiffs had any right to rely on any representations allegedly made by the individual defendants which would give rise to a claim for damages against any of these defendants.

Count Four. For reasons set forth with respect to Counts One, Two and Three, and further for failure to state with any particularity their allegations of a fraudulent scheme utilizing the U. S. Mails, and other interstate communications, or to allege any injury to their business as required under 18 USC §1962 and §1964, Count Four fails to state a claim against any of these defendants.

SECOND DEFENSE

The Court lacks subject matter jurisdiction and personal jurisdiction over the defendants, PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA. and ROY E. CAUGHFIELD.

THIRD DEFENSE

Any causes of action that may be found to exist in this matter have prescribed.

FOURTH DEFENSE

Alternatively, defendants specially plead negligence of the plaintiffs in bar or mitigation of plaintiffs' recovery.

FIFTH DEFENSE

Alternatively, plaintiffs recovery and/or relief is barred by estoppel and waiver.

SIXTH DEFENSE

NOW, answering each allegation of the original Complaint, the Amended Complaint, and the Second Amended Complaint, the defendants, PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA. and ROY E. CAUGHFIELD, do, respectfully represent:

Count One.

1.

Admitted.

2.

Admitted.

3.

Admitted.

4.

Answer not required of these defendents.

4A.

Answer not required of these defendants.

5.

Denied.

6.

Denied.

7.

Denied for lack of sufficient information to justify a belief therein.

8.

Denied for lack of sufficient information to justify a belief therein.

9.

Denied for lack of sufficient information to justify a belief therein.

10.

Denied for lack of sufficient information to justify a belief therein.

11.

Denied for lack of sufficient information to justify a belief therein.

12.

Denied for lack of sufficient information to justify a belief therein.

13.

Denied as originally stated and as amended.

14.

Denied as originally stated and as amended for lack of sufficient information to justify a belief therein.

15.

Denied for lack of sufficient information to justify a belief therein.

16.

Denied for lack of sufficient information to justify a belief therein.

17.

Denied as originally stated and as amended.

18.

Denied as originally stated and as amended.

19.

Denied.

20.

Denied.

21.

Denied as originally stated and as amended.

22.

Denied as originally stated and as amended.

23.

Denied as originally stated and as amended.

24.

Denied for lack of sufficient information to justify a belief therein.

25.

Denied for lack of sufficient information to justify a belief therein.

26.

Denied for lack of sufficient information to justify a belief therein.

27.

Denied.

Count Two.

28.

Your defendants, PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA. and ROY E. CAUGHFIELD, need not answer the allegations of Paragraph 28, but insofar as same needs to be answered, your defendants incorporate herein their affirmative defenses and answers to the allegations contained in Paragraphs 1-27 hereinabove.

29.

Denied.

30.

Denied.

Count Three.

31.

Your defendents, PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA. and ROY E. CAUGHFIELD, need not answer the allegations of Paragraph 31, but insofar as same needs to be answered, your defendants incorporate herein their affirmative defenses and answers to the allegations contained in Paragraphs 1-30 hereinabove.

32.

Denied.

Count Four.

33.

Your defendents, PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA. and ROY E. CAUGHFIELD, need not answer the allegations of Paragraph 33, but insofar as same needs to be answered, your defendants incorporate herein their affirmative defenses and answers to the allegations contained in Paragraphs 1-32 hereinabove.

34.

Denied.

35.

Denied.

36.

Denied.

37.

Denied.

WHEREFORE, defendants, PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LA. and ROY E. CAUGHFIELD, pray that this Answer be deemed good and sufficient, and that after all legal delays, there be judgment herein in their favor and that the

claims of the plaintiffs herein be dismissed at their costs; and for such other and further relief as this Court may deem proper.

LAW OFFICES OF WARREN D. RUSH

BY:/s/ Leo Jerome Lahey

LEO JEROME LAHEY
Attorney for Defendants, Planters
Trust & Savings Bank of Opelousas,
La. and Roy E. Caughfield
P. O. Box 53713, OCS
Lafayette, Louisiana 70505
(318) 235-2425

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer has this day been served on all counsel of record by depositing same in the U.S. Mail, postage prepaid and properly addressed.

Lafayette, Louisiana, this 9th day of May, 1984.

/s/ Leo Jerome Lahey

LEO JEROME LAHEY

STATE OF LOUISIANA

OFFICE OF FINANCIAL INSTITUTIONS

BATON ROUGE, LOUISIANA

JAMES A. HAYES
COMMISSIONER OF
FINANCIAL INSTITUTIONS

May 18, 1984

Planters Trust & Savings Bank of Opelousas
Attention: Officers and Directors
110 East Bellevue Street
Post Office Box 1299
Opelousas, Louisiana 70570

Re: Order to close bank

Gentlemen:

Pursuant to the authority vested in the Commissioner of Financial Institutions for the State of Louisiana under La. R.S. 6:383 and upon my conclusion after investigation that the Planters Trust & Savings Bank of Opelousas is in an unsound or unsafe condition to transact the business for which it was organized and that it unsafe and inexpedient for the bank to continue business, I am closing the Planters Trust & Savings Bank of Opelousas at once and taking possession of its books, property and affairs.

Respectfully,

/s/James A. Hayes

James A. Hayes

Commissioner of
Financial Institutions

JAH/rve

POST OFFICE BOX 44095, CAPITOL STATION · BATON ROUGE, LOUISIANA 70804
(504) 925-4661

STATE OF LOUISIANA

OFFICE OF FINANCIAL INSTITUTIONS

BATON ROUGE, LOUISIANA

JAMES A. HAYES
COMMISSIONER OF
FINANCIAL INSTITUTIONS

May 18, 1984

The Honorable William M. Isaac
Chairman
or Authorized Representative
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Re: Planters Trust & Savings Bank of Opelousas
Louisiana

Dr. Mr. Isaac:

As of this date and pursuant to my authority under La. R.S. 6:383 I have declared the Planters Trust & Savings Bank of Opelousas to be in an unsound and/or unsafe condition to transact the business for which it was organized. It being unsafe and inexpedient for the bank to continue business I have closed the bank as of this date.

Pursuant to the authority vested in me under La. R.S. 6:454 I hereby tender appointment to the Federal Deposit Insurance Corporation as receiver and liquidator of the Planters Trust & Savings Bank of Opelousas. As receiver and liquidator, the Federal Deposit Insurance Corporation shall possess the powers and privileges provided by the laws of Louisiana.

Sincerely,

/s/James A. Hayes

James A. Hayes
Commissioner of
Financial Institutions

JAH/rve

POST OFFICE BOX 44095, CAPITOL STATION - BATON ROUGE, LOUISIANA 70804
(504) 925-4661

FDIC
Federal Deposit Insurance Corporation, P. O. Box 1299,
Opelousas, LA 70570

May 18, 1984

James A. Hayes
Commissioner of Financial
Institutions
State of Louisiana
Baton Rouge, Louisiana

SUBJECT: AP-388 Planters Trust & Savings Bank
Opelousas, Louisiana - In Liquidation

Dear Commissioner:

Pursuant to your tender of appointment as Receiver and Liquidator of the Planters Trust and Savings Bank of Opelousas, I hereby accept such appointment on behalf of the Federal Deposit Insurance Corporation.

Sincerely,

/s/Arthur Lorentzen

FEDERAL DEPOSIT INSURANCE
CORPORATION
BY: Arthur F. Lorentzen, Jr.
Senior Liquidation Specialist

/tt

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

PLANTERS TRUST & SAVINGS BANK

VERSUS NO. CA-83-2612-L

W. T. LANGLEY, et al

CONSOLIDATED WITH

W. T. LANGLEY, et al

VERSUS NO. CA-84-0557-L

PLANTERS TRUST AND SAVINGS BANK
OF OPELOUSAS, et al

ANSWERS OF PLAINTIFFS TO FIRST INTERROGATORIES OF FEDERAL LAND BANK OF NEW ORLEANS

ANSWER TO INTERROGATORY NO. 1 (A):

1) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made September 9, 1980, verbally, at the subject property. Present were Elmer Landry, W. T. Langley, and Jim Morgan.

2) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made September 9, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, and Jim Morgan.

3) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the

plaintiffs. This representation was made September 10, 1980, verbally, at the subject property. Present were Elmer Landry, W. T. Langley, and Jim Morgan.

4) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made September 19, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, Jim Morgan, Roy Caughfield, A.J. Howard, Butch Corbello, and John Miller.

5) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made October 3, 1980, verbally, at the subject property. Present were Elmer Landry and W. T. Langley.

6) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made October 3, 1980, verbally and in writing, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, Jim Morgan, and Roy Caughfield.

7) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made November 10, 1980, verbally, at the offices of The Federal Land Bank, Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, Patricia A. Dillon, and Jim Morgan.

8) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made November 11, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Elmer Landry and W. T. Langley.

9) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made November 20, 1980, verbally, at the offices of The Federal Land Bank of Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, Patricia A. Dillon, and Jim Morgan.

10 Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made December 18, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, Jim Morgan, Roy Caughfield, A. J. Howard, Butch Corbello, and John Miller.

ANSWER TO INTERROGATORY NO. 1 (B):

1) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made September 19, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Roy Caughfield, W. T. Langley, Elmer Landry, and Jim Morgan.

2) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made September 19, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Roy Caughfield, W. T. Langley, Elmer Landry, Jim Morgan, A.J. Howard, Butch Corbello, and John Miller.

3) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made October 3, 1980, verbally and in writing, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Roy Caughfield, W. T. Langley, Elmer Landry, and Jim Morgan.

4) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made October 10, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Roy Caughfield, and W. T. Langley.

5) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made December 16 to December 17, 1980, verbally by telephone, from Baton Rouge, Louisiana, to Blytheville, Arkansas. Present were Roy Caughfield, W. T. Langley, and Elmer Landry.

6) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made December 18, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Roy Caughfield, W. T. Langley, Elmer Landry, Jim Morgan, A.J. Howard, Butch Corbello, and John Miller.

7) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs. This representation was made December 19, 1980, verbally, at the Holiday Inn North, Lafayette, Louisiana. Present were Roy Caughfield, W. T. Langley, and Elmer Landry.

ANSWER TO INTERROGATORY NO. 1 (C):

1) Elmer Landry, Lafayette, Louisiana, President, The Federal Land Bank of Opelousas, Louisiana. Mr. Landry will testify that he and Roy Caughfield represented to the plaintiffs that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs.

2) Roy Caughfield, 2268 George Drive, Opelousas, Louisiana, President Planters Trust & Savings Bank, Opelousas,

Louisiana. Mr. Caughfield will testify that he and Elmer Landry represented to the plaintiffs that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs.

3) W. T. Langley, Route 3, Box 234, Tallulah, Louisiana, farmer. Mr. Langley will testify that Elmer Landry and Roy Caughfield represented to him that the landowner of the subject property owned mineral rights which would be deeded to him.

4) Jim Morgan, Route 3, Box 234, Tallulah, Louisiana, farmer. Mr. Morgan will testify that Elmer Landry and Roy Caughfield represented to the plaintiffs that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs.

5) Patricia A. Dillon, P.O. Box 1766, Blytheville, Arkansas, Business Manager, Langley Farms. Ms. Dillon will testify that Elmer Landry represented to the plaintiffs that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs.

6) A. J. Howard, P.O. Box 1299, Opelousas, Louisiana 70570, Executive Vice President and Chief Executive Officer, Planters Trust & Savings Bank, Opelousas, Louisiana. Mr. Howard will testify that Elmer Landry and Roy Caughfield represented to the plaintiffs that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs.

7) Walter C. (Butch) Corbello, P.O. Box 1299, Opelousas, Louisiana 70570, Vice President and Commercial Loan Officer, Planters Trust & Savings Bank, Opelousas, Louisiana. Mr. Corbello will testify that Elmer Landry and Roy Caughfield represented to the plaintiffs that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs.

8) John Q. Miller, Jr., P.O. Box 1299, Opelousas, Louisiana 70570, Senior Vice President and Senior Loan Officer, Planters Trust & Savings Bank, Opelousas, Louisiana. Mr. Miller will testify that Elmer Landry and Roy Caughfield represented to the plaintiffs that the landowner of the subject property owned mineral rights which would be deeded to the plaintiffs.

ANSWER TO INTERROGATORY NO. 1 (D):

Purchase Agreement dated October 3, 1980, executed by W. T. Langley.

ANSWER TO INTERROGATORY NO. 2 (A):

The examination was made by the law firm of McCollister, McCleary, Fazio & Holliday in approximately March, 1983.

ANSWER TO INTERROGATORY NO. 2 (B):

In accordance with their representations to plaintiffs, a Purchase Agreement dated October 3, 1980, was prepared by Roy Caughfield and Elmer Landry, stating that Leenerts Farms, Inc. would convey one-half (½) of all mineral interests to the plaintiffs. However, in fact, both Caughfield and Landry knew that Leenerts Farms, Inc. had already transferred all of their mineral interests in the subject property to Don Williams, a business partner of Caughfield. Further, Caughfield and Landry, without plaintiffs knowledge, caused Williams to deed to plaintiffs a small portion of the mineral interests which had been transferred to Williams by Leenerts Farms, Inc. Caughfield and Landry did not inform plaintiffs of these actions, provide for them a copy of the mineral deed so executed, or inform plaintiffs that Leenerts Farms, Inc. had transferred their interests to Williams.

ANSWER TO INTERROGATORY NO. 2 (C):

1) Roger Leenerts, P.O. Box 220, Golden, Illinois 62339. Mr. Leenerts will testify that with the knowledge of Landry and Caughfield, Leenerts Farms, Inc. transferred all of its mineral rights in the subject property to Williams and that on October 3, 1980, when the Purchase Agreement with plaintiffs was executed, Leenerts Farms, Inc. owned no mineral interests in the subject property.

2) John Leenerts, P.O. Box 220, Golden, Illinois 62339. Mr. Leenerts will testify that with the knowledge of Landry and Caughfield, Leenerts Farms, Inc. transferred all of its mineral rights in the subject property to Williams and that on October 3, 1980, when the Purchase Agreement with plaintiffs was executed, Leenerts Farms, Inc. owned no mineral interests in the subject property.

3) Roy Caughfield. Mr. Caughfield will testify that he knew that Leenerts Farms, Inc. had transferred all of its mineral rights in the property to Williams and that he concealed this information from plaintiffs.

4) Elmer Landry. Mr. Landry will testify that he knew that Leenerts Farms, Inc. had transferred all of their mineral rights in the property to Don Williams and that he concealed this information from plaintiffs.

5) Don Williams, 903 East Main Street, New Roads, Louisiana 70760. Mr. Williams will testify that with the knowledge of Caughfield and Landry, Leenerts Farms, Inc. transferred all of its mineral interests in the subject property to him. Mr. Williams will also testify that acting on instructions given to him by Caughfield and Landry, and without plaintiffs' presence or knowledge, executed and caused to be filed a deed to plaintiffs for a small portion of the mineral rights in the subject property.

6) W. T. Langley. Mr. Langley will testify that Landry and Caughfield did not tell him of the existence of the mineral deed from Leenerts Farms, Inc. to Williams nor of the mineral deed from Williams to plaintiffs.

ANSWER TO INTERROGATORY NO. 2 (D):

1) Mineral deed from Leenerts Farms, Inc. to Don Williams.

2) Mineral deed from Don Williams to plaintiffs.

3) Mineral deed from Don Williams to Roy Caughfield.

ANSWER TO INTERROGATORY NO. 3:

No.

ANSWER TO INTERROGATORY NO. 4:

(A) None.

(B) None.

(C) None for plaintiffs. Nelson M. Lee, Attorney at Law, P.O. Box 88, Bunkie, Louisiana 71322, is believed to have conducted a title examination for The Federal Land Bank of New Orleans and/or Planters Trust & Savings Bank.

(D) 1) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana.

2) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana.

ANSWER TO INTERROGATORY NO. 5 (A):

1) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that The Federal Land Bank would finance 100% of the purchase of the farm property in the area. These representations were made several times in August and September, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Elmer Landry and W. T. Langley.

2) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that The Federal Land Bank would finance 100% of the purchase of the farm property in the area. This representation was made September 8, 1980, verbally, at Don's Seafood House, Lafayette, Louisiana. Present were Elmer Landry, W. T. Langley, and Jim Morgan.

3) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented the following to plaintiffs: that the subject property contained 400 mineral acres and 1,628.4 surface acres; that The Federal Land Bank would finance 100% of the purchase price of the subject property; that plaintiffs would have no personal liability for any loans made to finance the purchase of the subject property; that there were no outstanding leases on the subject property; that he would secure for plaintiffs an additional $100,000.00 line of credit, as well as a crop production loan; that he would have a buyer to purchase the property from plaintiffs as soon as the closing of the property was consummated; and that plaintiffs would realize a large profit from the referenced resale of the property; that plaintiffs would not be required to make any loan payments on the subject property until a resale of the property was made by plaintiffs. These representations were made September 9, 1980, verbally, at the subject property. Present were Elmer Landry, W. T. Langley, and Jim Morgan.

4) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in

#3 above. These representations were made September 9, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, W.T. Langley, Jim Morgan, and Roy Caughfield.

5) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that the subject property contained 400 mineral acres and 1,628.4 surface acres. These representations were made September 10, 1980, verbally, at the subject property. Present were Elmer Landry, W.T. Langley, Jim Morgan, Roy Caughfield, A.J. Howard, Butch Corbello, and John Miller.

6) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in #3 above. These representations were made September 19, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, W.T. Langley, Jim Morgan, Roy Caughfield, A. J. Howard, Butch Corbello, and John Miller.

7) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in #3 above. These representations were made October 3, 1980, verbally, at the offices of The Federal Land Bank, Opelousas, Louisiana. Present were Elmer Landry and W.T. Langley.

8) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in #3 above. These representations were made October 3, 1980, verbally and in writing, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, W.T. Langley, Jim Morgan, and Roy Caughfield.

9) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in #3 above. These representations were made November 10, 1980, verbally, at the offices of The Federal Land Bank of Opelousas, Louisiana. Present were Elmer Landry, W.T. Langley, and Patricia A. Dillon.

10) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that plaintiffs would have no personal liability for any loans made to finance the purchase of

the subject property; that The Federal Land Bank would finance 100% of the purchase price of the subject property; and that plaintiffs would not be required to make any loan payments on the subject property until a resale of the property was made by plaintiffs. These representations were made November 11, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Elmer Landry and W. T. Langley.

11) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in #10 above. These representations were made November 12, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Elmer Landry and W. T. Langley.

12) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in #3 above. These representations were made November 20 to November 21, 1980, verbally, at the offices of The Federal Land Bank of Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, Patricia A. Dillon, and Jim Morgan.

13) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in #10 above. These representations were made November 23, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Elmer Landry and W. T. Langley.

14) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in #3 above. These representations were made November 24, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Elmer Landry and W. T. Langley.

15) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that he would have a buyer to purchase the property from plaintiffs as soon as the closing of the sale of the property was consummated and that plaintiffs would realize a large profit from the referenced resale of the property. These representations were made December 6, 1980,

verbally, at the offices of Nelson Lee, Bunkie, Louisiana. Present were Elmer Landry, W. T. Langley, Jim Morgan, and Nelson Lee.

16) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that Planters Trust & Savings Bank, Opelousas, Louisiana, would finance the balance of the purchase price in excess of $1,350,000.00 that Federal Land Bank could not now finance. Mr. Landry further represented that this loan would be made with no personal liability to plaintiffs, at a rate of interest 2% above the prime rate of Chase Manhattan Bank, and with plaintiffs not being required to make any loan payments until the subject property was resold. These representations were made December 16, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Elmer Landry and W. T. Langley.

17) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented each of those items identified in #16 above. These representations were made December 18, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, Roy Caughfield, W. T. Langley, Jim Morgan, A. J. Howard, Butch Corbello, and John Miller.

18) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that he would have a buyer to purchase the property from plaintiffs. This representation was made December 29 to December 30, 1980, verbally, at the offices of The Federal Land Bank of Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, and Jim Morgan.

19) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that Plaintiffs would not be required to make any loan payments on the subject property until a resale of the property was made by plaintiffs. Mr. Landry also stated that he and Nelson Lee had another potential buyer for the property, Jerry Baine, whom Mr. Langley could meet at the office of Nelson Lee. These representations were made December 22, 1981, verbally, at the offices of The Federal Land Bank, Opelousas, Louisiana. Present were Elmer Landry and W. T. Langley.

20) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, represented that plaintiffs would not be required to make any loan payments on the subject property until a resale of the property was made by plaintiffs. This representation was made January 18, 1982, verbally, at the offices of The Federal Land Bank of Opelousas, Louisiana. Present were Elmer Landry , W. T. Langley, and Patricia A. Dillon.

ANSWER TO INTERROGATORY NO. 5 (B):

1) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented the following to plaintiffs: that the subject property contained 400 mineral acres and 1,628.4 surface acres; that The Federal Land Bank would finance 100% of the purchase price of the subject property; that plaintiffs would have no personal liability for any loans made to finance the purchase of the subject property; that he would secure for plaintiff's an additional $100,000.00 line of credit, as well as a crop production loan; that he would have a buyer to purchase the property from as soon as the closing of the property was consummated; that plaintiffs would realize a large profit from the referenced resale of the property; and that plaintiffs would not be required to make any loan payments on the subject property until a resale of the property was made by plaintiffs. These representations were made September 9, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, Jim Morgan, and Roy Caughfield.

2) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented each of those items identified in #1 above. These representations were made September 19, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Roy Caughfield, W. T. Langley, Elmer Landry, Jim Morgan, A. J. Howard, Butch Corbello, and John Miller.

3) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented each of those items identified in #1 above. These representations were made October 3, 1980, verbally and in writing, at the offices of Planters Trust &

Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, W. T. Langley, Jim Morgan and Roy Caughfield.

4) Roy Caughfield, President Planters Trust & Savings Bank, Opelousas, Louisiana, represented that plaintiffs would have no personal liability for any loans made to finance the purchase of the subject property and that the subject property contained 400 mineral acres and 1,628.4 surface acres. These representations were made October 10, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Roy Caughfield and W. T. Langley.

5) Roy Caughfield, President Planters Trust & Savings Bank, Opelousas, Louisiana, represented that plaintiffs would have no personal liability for any loans made to finance the purchase of the subject property and that the subject property contained 400 mineral acres and 1,628.4 surface acres. These representations were made October 10, 1980, verbally by telephone, from Opelousas, Louisiana, to Blytheville, Arkansas. Present were Roy Caughfield and W. T. Langley.

6) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented that Planters Trust & Savings Bank, Opelousas, Louisiana, would finance the balance of the purchase price in excess of $1,350,000.00 that The Federal Land Bank could not now finance. Mr. Caughfield further represented that this loan would be made with no personal liability to plaintiffs at a rate of interest 2% above the prime rate of Chase Manhattan Bank, and with plaintiffs not being required to make any loan payments until the subject property was resold. These representations were made December 16, to December 18, 1980, verbally by telephone, from Texas and Baton Rouge, Louisiana to Blytheville, Arkansas. Present were Roy Caughfield and W. T. Langley.

7) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented each of those items identified in #5 above. These representations were made December 18, 1980, verbally, at the offices of Planters Trust & Savings Bank, Opelousas, Louisiana. Present were Elmer Landry, Roy Caughfield, W. T. Langley, Jim Morgan, A.J. Howard, Butch Corbello, and John Miller.

8) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented each of those items identified in #1 and #5 above. These representations were made December 19, 1980, verbally, at the Holiday Inn North, Lafayette, Louisiana. Present were Roy Caughfield, Elmer Landry, and W. T. Langley.

9) Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, represented each of those items identified in #1 and #5 above. These representations were made March 8, 1982, verbally, at the offices of Planters BankShares, Opelousas, Louisiana. Present were Roy Caughfield, W. T. Langley, Patricia A. Dillon, and for a portion of the representations, Ken Back.

ANSWER TO INTERROGATORY NO. 5 (C):

The following persons will testify that Elmer Landry and Roy Caughfield made the representations to plaintiffs as outlined above:

Elmer Landry
Roy Caughfield
W. T. Langley
Jim Morgan
Patricia A. Dillon
A. J. Howard
Butch Corbello
John Miller
Nelson Lee
Ken Back

ANSWER TO INTERROGATORY NO. 5 (D):

1) Purchase Agreement dated October 3, 1980, executed by W.T. Langley.

2) Notes made by W.T. Langley concerning the terms of the purchase of the subject property as represented to him by Elmer Landry and Roy Caughfield.

3) Federal Land Bank reamortization agreements.

4) Planters Bank note renewals.

5) Telephone bills.

6) Telephone message sheets.

ANSWER TO INTERROGATORY NO. 6 (A):

Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, and Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, made the statements, claims, representations and inducements identified in the responses to Interrogatory #1 through #5. However, Roy Caughfield and Elmer Landry did not deliver to plaintiffs the items represented. Further, Roy Caughfield and Elmer Landry knew that they would not be able to cause plaintiffs to receive those items represented. Particularly:

1) The subject property contained not 1,628.4, but rather 1,522.9 acres as revealed by survey;

2) The property was encumbered with a mineral lease;

3) The owners of the property did not, at the time of the sale, own any mineral rights in the property;

4) The promissory notes signed by the plaintiffs purport to oblige them personally and do not provide solely for "in rem" liability;

5) The interest rate charged by Planters Trust & Savings Bank has been charged at a rate in excess of 2% over Chase Manhattan prime;

6) Demands have been made upon the plaintiffs by The Federal Land Bank and Planters Trust & Savings Bank for repayment of the loans extended at the instance of Messrs. Landry and Caughfield; and

7) A portion of the mineral rights in question were subsequently transferred to Roy Caughfield.

ANSWER TO INTERROGATORY NO. 6 (B):

1) All persons identified in responses to Interrogatory #1 through #5.

2) Robert W. Newell, P.O. Box 717, Newport, Arkansas 72112, Miller-Newell Engineers, Ltd., Engineer. Mr. Newell will testify that the subject property does not contain 1,628.4 acres.

3) Otis E. Lomenick, Jr., P.O. Box 1631, Opelousas, Louisiana, Attorney at Law. Mr. Lomenick will testify that the subject property does not contain 1,628.4 acres.

4) G. Douglas Dean, P.O. Box 1631, Opelousas, Louisiana, Attorney at Law. Mr. Dean will testify that the subject property does not contain 1,628.4 acres.

5) Robert G. Pugh, Commercial National Bank Building, Suite 555, Shreveport, Louisiana 71101, Attorney at Law. Mr. Pugh will testify that the subject property does not contain 1,628.4 acres.

6) All potential witnesses who have been previously identified in these Answers to Interrogatories.

ANSWER TO INTERROGATORY NO. 6 (C):

1) All documents identified in responses to Interrogatory #1 through #5.

2) Survey map prepared by Robert W. Newell.

3) Letter of Robert G. Pugh dated January 3, 1982.

ANSWER TO INTERROGATORY NO. 7 (A - D):

See responses to Interrogatory #1 through #6.

ANSWER TO INTERROGATORY NO. 8 (A):

Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, and Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, stating the acknowledged influence and strength, made representations to plantiffs, fully detailed in the responses to Interrogatory #1 through #7. The positions of power held by Messrs. Landry and Caughfield allowed them undisputed access to facts and information concerning the proposed transactions which would not be questioned when stated by them. Plaintiffs relied totally upon Mr. Landry, President of The Federal Land Bank of Opelousas, Louisiana, and Mr. Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, and did not take any precautions that would have been used when dealing with individuals or firms not in a position of trust that Mr. Landry and Mr. Caughfield held. Further, many of the representations made by Messrs. Landry and Caughfield were made in writing in the Purchase Agreement, giving plaintiffs even less reason to try to independently verify the information. All facts and information concerning the loans and financing for the transaction were controlled 100% by

Messrs. Landry and Caughfield, therefore, there was no other manner in which plaintiffs could ascertain these facts. Also, Messrs. Landry and Caughfield knew how they and their companies were to benefit financially from the actions plaintiffs took as a result of their representations.

ANSWER TO INTERROGATORY NO. 8 (B):

All individuals identified in response to Interrogatory #1 through #7.

ANSWER TO INTERROGATORY NO. 8 (C):

1) All documents identified in response to Interrogatory #1 through #7.

2) Pleadings from the Leenerts Farms, Inc. bankruptcy.

ANSWER TO INTERROGATORY NO. 9 (A):

(A) See answers in response to Interrogatory #1 through #8. Without the assurance that:

a) 1,628.4 acres were present;

b) 400 mineral acres would be received;

c) There was "in rem" liability only;

d) The interest rate on the Planters Bank loan was 2% above Chase Manhattan prime; and

e) No mineral lease burdened the property.

The plaintiffs would not have purchased the property and taken the loans extended by The Federal Land Bank and Planters Trust & Savings Bank.

ANSWER TO INTERROGATORY NO. 9 (B):

No.

ANSWER TO INTERROGATORY NO. 10 (A):

In the absence of the statements, claims, representations, inducements and omissions of Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, and Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, as fully identified in response to Interrogatory #1 through #9, plaintiffs would not have signed the promissory notes.

ANSWER TO INTERROGATORY NO. 10 (B):

No.

ANSWER TO INTERROGATORY NO. 11 (A):

See answers in response to Interrogatory #1 through #10. Further, in accordance with their representations, Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, and Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, prepared the Purchase Agreement which stated that there were no outstanding leases on the property. Only after the purchase of the property were plaintiffs aware of the outstanding mineral leases. R. L. Kielty of Chevron first notified plaintiffs of the existence and terms of the lease.

ANSWER TO INTERROGATORY NO. 11 (B):

No.

ANSWER TO INTERROGATORY NO. 12 (A):

At the time the contract to June Lowery was to be executed Mrs. Lowery and her attorneys, Otis Lomenick and Douglas Dean, stated that they would not execute the contract because the property conveyed to them did not contain the number of acres which plaintiffs believed it contained. Mrs. Lowery also later told Jim Morgan again that the reason she did not purchase the property was because of the shortage of acres.

ANSWER TO INTERROGATORY NO. 12 (B):

1) June Lowery, Lafayette, Louisiana, landowner. Mrs. Lowery will testify that the reason she did not consummate the purchase of the subject property was because of the shortage of acres.

2) Douglas Dean. Mr. Dean will testify that the reason Mrs. Lowery did not consummate the purchase of the subject property was because of the shortage of acres.

3) Otis Lomenick. Mr. Lomenick will testify that the reason Mrs. Lowery did not consummate the purchase of the subject property was because of the shortage of acres.

4) Jim Morgan. Mr. Morgan will testify that the reason Mrs. Lowery did not consummate the purchase of the subject property was because of the shortage of acres.

ANSWER TO INTERROGATORY NO. 12 (C):

Contract between June Lowery and W. T. Langley.

ANSWER TO INTERROGATORY NO. 12 (2nd No. 12):

(A) A mineral deed transferring interest from Don Williams and Margaret Randolph Williams to Roy Caughfield was filed in the records of Pointe Coupee Parish on March 16, 1982.

(B) 1) Don Williams and Margaret Randolph Williams. Mr. and Mrs. Williams will testify that they deeded their mineral interests in the subject property to Roy Caughfield.

2) Roy Caughfield. Mr. Caughfield will testify that Mr. and Mrs. Williams deeded their mineral interests in the subject property to him.

(C) Mineral deed from Don Williams and Margaret Randolph Williams to Roy Caughfield.

ANSWER TO INTERROGATORY NO. 13:

No.

ANSWER TO INTERROGATORY NO. 14:

Shortage of surface acres:

1) The plaintiffs received 105.5 acres less than that represented to them. This additional acreage is worth approximately $2,000.00 per acre.

2) a) See all persons revealed in foregoing responses.

b) Expert witnesses yet to be determined.

c) Yet to be determined beyond those previously mentioned hereinabove.

Diminished delay rentals:

The amount sought in the Complaint represents the expected delays which would have been received had the property been unencumbered with a mineral lease and been leased at prevailing rates at that time.

Bonus payments:

1) Unknown to the plaintiffs and in direct contravention of warranties made to them as described hereinabove, the subject property was burdened with a mineral lease in favor of Chevron. At the time of the purchase by the plaintiffs, the prevailing market rates for bonus payments were $1,000.00 per acre. The plaintiffs owned 1,522.9 acres which would have been available for lease.

2) a) See all persons revealed in the foregoing responses.

   b) Expert witnesses yet to be determined.

3) Yet to be determined beyond those previously mentioned hereinabove.

Value of mineral rights wrongfully withheld:

1) The plaintiffs were warranted 400 mineral acres. At the time of their purchase, the plaintiffs contemplated the sale of the mineral rights. Prevailing market rates at the time were $8,000 to $40,000 per mineral acre. The plaintiffs believe the mineral rights which it was warranted they would acquire were worth approximately $9,100.00 per acre.

2) a) All persons identified in the foregoing responses.

   b) Expert witnesses yet to be determined.

   c) Yet to be determined beyond those previously mentioned hereinabove.

Impairment of bank relationships, damage to reputation and loss of creditworthiness:

1) Yet to be determined.

2) Yet to be determined.

3) Yet to be determined.

ANSWER TO INTERROGATORY NO. 14 (A):

1) The surface acreage of the subject property does not contain 1,628.4 acres.

2) The mineral acreage does not contain 400 or more acres.

3) Chevron held a mineral lease on the property.

4) John Barton had executive rights to the mineral interests on the property.

ANSWER TO INTERROGATORY NO. 14 (B):

1) All persons identified in response to Interrogatory #1 through #13.

2) John Barton. Mr. Barton will testify that he held executive rights to the mineral interests on the property.

3) Expert witnesses yet to be determined.

ANSWER TO INTERROGATORY NO. 15 (A):

1) Leenerts Farms, Inc. filed by bankruptcy in early 1981.

2) At the time of the negotiation with the plaintiffs, Planters Trust & Savings Bank held loans to Leenerts Farms, Inc. which were in default, and on which Planters Trust & Savings Bank would have lost money and been subject to the terms of the bankruptcy proceedings had plaintiffs not been induced to purchase the property, thereby permitting the loans of Leenerts Farms, Inc. to be paid off.

3) Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, received commission money.

4) Roy Caughfield received a large portion of the mineral acres on the subject property.

ANSWER TO INTERROGATORY NO. 15 (B):

1) Roger Leenerts. Mr. Leenerts will testify that Leenerts Farms, Inc. was in default on loans to Planters Trust & Savings Bank. Mr. Leenerts will also testify that Leenerts Farms, Inc. filed for bankruptcy in early 1981.

2) John Leenerts. Mr. Leenerts will testify that Leenerts Farms, Inc. was in default on loans to Planters Trust & Savings Bank. Mr. Leenerts will also testify that Leenerts Farms, Inc. filed for bankruptcy in early 1981.

3) Elmer Landry. Mr. Landry will testify that he and Roy Caughfield induced plaintiffs to purchase the subject property so that Planters Trust & Savings Bank would not be subject to losses from Leenerts Farms, Inc. Mr. Landry will also testify that he received commission money from the transaction.

4) Roy Caughfield. Mr. Caughfield will testify that he and Elmer Landry induced plaintiffs to purchase the subject property so that Planters Trust & Savings Bank would not be subject to losses from Leenerts Farms, Inc. Mr. Caughfield will also testify that he received mineral interests on the subject property.

5) Don Williams. Mr. Williams will testify that he transferred mineral interests on the subject property to Roy Caughfield.

ANSWER TO INTERROGATORY NO. 15 (C):

1) Bankruptcy filings of Leenerts Farms, Inc.

2 Loan documents and records relative to Leenerts Farms, Inc. in the possession of Planters Trust & Savings Bank.

3) Letter from Elmer Landry to A. J. Howard dated March 19, 1981.

4) Check to Linda Landry in the amount of $16,000.00 for the account of Elmer Landry.

5) Note to Elmer Landry in the amount of $24,000.00

6) Mineral deed from Don Williams to Roy Caughfield.

ANSWER TO INTERROGATORY NO. 16 (A):

1) $16,000.00 paid December 30, 1980, by W. T. Langley to Linda Landry for the account of Elmer Landry, paid by Langley Farms Check #2876. The considerations for this payment were services provided by Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, and Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas, Louisiana, as follows: representing Planters Trust & Savings Bank, Opelousas, Louisiana, and The Federal Land Bank of Opelousas, Louisiana, in the financing of the purchase; guaranteeing plaintiffs a subsequent buyer for the subject property; and continuing support and assistance in the resale of the property and financing.

2) $24,000.00 as represented by a Promissory Note dated March 20, 1981, executed by W. T. Langley for the benefit of Elmer Landry. The considerations for this Promissory Note were services provided by Elmer Landry, President of The Federal Land Bank of Opelousas, Louisiana, and Roy Caughfield, President of Planters Trust & Savings Bank, Opelousas,

Louisiana, as follows: representing Planters Trust & Savings Bank, Opelousas, Louisiana, and The Federal Land Bank of Opelousas, Louisiana, in the financing of the purchase; guaranteeing plaintiffs a subsequent buyer for the subject property; and continuing support and assistance in the resale of the property and financing.

3) Mineral interests in the subject property acquired on March 16, 1982, by Mineral Deed from Don Williams to Roy Caughfield. This transfer resulted in plaintiffs' loss of mineral acreage and Roy Caughfield's gain.

ANSWER TO INTERROGATORY NO. 16 (B):

See those answers supplied in responses to Interrogatory #1 through #15.

ANSWER TO INTERROGATORY NO. 16 (C):

1) Elmer Landry. Mr. Landry will testify that he received the money and Promissory Note from W. T. Langley for the considerations stated.

2) Roy Caughfield. Mr. Caughfield will testify that he knew of the money and Promissory Note received by Elmer Landry from W. T. Langley. Mr. Caughfield will further testify that he received the mineral interests in the subject property from Don Williams.

3) W. T. Langley. Mr. Langley will testify that he paid the money and executed the Promissory Note to Elmer Landry for the considerations as stated.

4) Jim Morgan. Mr. Morgan will testify that Elmer Landry received the money and Promissory Note from W. T. Langley for the considerations as stated.

5) Patricia A. Dillon. Ms. Dillon will testify that Elmer Landry received the money and Promissory Note from W. T. Langley for the considerations as stated.

6) Nelson Lee. Mr. Lee will testify that Elmer Landry received the money and Promissory Note from W.T. Langley for the considerations as stated.

7) Don Williams. Mr. Williams will testify that he transferred mineral interests in the subject property to Roy Caughfield.

ANSWER TO INTERROGATORY NO. 16 (D):

1) Langley Farms Check #2876.

2) Promissory Note dated March 20, 1981, presumably in the possession of Elmer Landry.

3) Mineral Deed from Don Williams to Roy Caughfield.

ANSWER TO INTERROGATORY NO. 17 (A):

See responses to Interrogatory #1 through #16.

ANSWER TO INTERROGATORY NO. 17 (B):

Those persons identified in response to Interrogatory #1 through #16.

ANSWER TO INTERROGATORY NO. 17 (C):

1) Those documents identified in Interrogatory #1 through #16.

2) Telephone bills of W. T. Langley.

3) Telephone message sheets of W. T. Langley.

ANSWER TO INTERROGATORY NO. 18:

We assume that this refers to the allegations of Paragraph 36 and not Paragraph 6 as stated. Accordingly, see those answers provided in response to Interrogatory #1 through #17.

ANSWER TO INTERROGATORY NO. 19 (A):

1) Elmer Landry always identified himself and referred to himself in all actions as the President of The Federal Land Bank of Opelousas, Louisiana.

2) Elmer Landry held meetings with the plaintiffs at the offices of The Federal Land Bank of Opelousas, Louisiana, both during regular business hours and after business hours.

3) Elmer Landry presented plaintiffs with his business card identifying himself as the President of The Federal Land Bank of Opelousas, Louisiana.

4) Elmer Landry stated that he was acting for The Federal Land Bank of Opelousas, Louisiana, during each and every meeting and conversation which he had with plaintiffs.

5) Elmer Landry committed The Federal Land Bank of Opelousas, Louisiana, to make loans for plaintiffs even when, as the plaintiffs subsequently learned, the subject property was outside of the jurisdiction of his office.

6) Elmer Landry completed The Federal Land Bank of Opelousas, Louisiana, forms in connection with their attorneys to secure a Federal Land Bank loan on the property as promised by Landry.

7) Elmer Landry completed The Federal Land Bank of Opelousas, Louisiana, forms to reamortize loan payments as promised by Landry.

8) Elmer Landry negotiated with other Federal Land Bank of Opelousas, Louisiana, officers and employees regarding the loan to plaintiffs.

9) Elmer Landry used a car which belonged to The Federal Land Bank of Opelousas, Louisiana, to show plaintiffs the subject property and to perform other tasks directly related to the inducement of plaintiffs to purchase the subject property.

10) Elmer Landry was well known in the community of Opelousas, Louisiana, as the President of The Federal Land Bank, with many citizens of the area acknowledging his position while in the presence of the plaintiffs.

11) Plaintiffs would not have relied upon the representations of Elmer Landry had he not been acting as President of The Federal Land Bank of Opelousas, Louisiana.

12) Elmer Landry committed The Federal Land Bank of Opelousas, Louisiana, to take certain actions on behalf of the plaintiffs, those actions subsequently being consummated.

ANSWER TO INTERROGATORY NO. 19 (B).

1) Albert W. Magee, Jr. P.O. Drawer 15929, Baton Rouge, Louisiana 70895, President of The Federal Land Bank of Baton Rouge, Louisiana. Mr. Magee will testify that Elmer Landry acted for The Federal Land Bank of Opelousas, Louisiana, in his representations to plaintiffs.

2) Employees and customers of The Federal Land Bank of Opelousas, Louisiana, whose identity is unknown to plaintiffs.

3) Elmer Landry. Mr. Landry will testify that he acted on behalf of

The Federal Land Bank of Opelousas, Louisiana, in his representations to plaintiffs.

4) The following persons identified in Interrogatory #1 through #18 will testify that Elmer Landry acted on behalf of The Federal Land Bank of Opelousas, Louisiana, in his representations to plaintiffs:

Roy Caughfield
W.T. Langley
Jim Morgan
Patricia A. Dillon
A.J. Howard
Walter C. (Butch) Corbello
John Q. Miller, Jr.
Roger Leenerts
John Leenerts

ANSWER TO INTERROGATORY NO. 19 (C):

1) Elmer Landry's business cards naming his as President of The Federal Land Bank of Opelousas, Louisiana.

2) The Federal Land Bank loan forms and other documents completed by Elmer Landry on behalf of plaintiffs.

3) Telephone bills of The Federal Land Bank of Opelousas, Louisiana, showing calls made by Elmer Landry to plaintiffs from The Federal Land Bank offices and paid for by The Federal Land Bank.

ALL DATES IDENTIFIED IN ANSWERS TO INTERROGATORY #1 THROUGH #19 SHOULD BE CONSIDERED APPROXIMATE DATES.

W. T. LANGLEY and
MARY ANNE GRIMES LANGLEY

By: /s/ William C. Shockey
William C. Shockey,
Attorney

SWORN TO AND SUBSCRIBED before me, Notary, this 15th day of November, 1984.

/s/ Sidney D. Fazio

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 15 day of November, 1984, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

/s/ William C. Shockey

William C. Shockey

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LOUISIANA/FEDERAL DEPOSIT INSURANCE CORPORATION, IN ITS CORPORATE CAPACITY AS ASSIGNEE OF THE ASSETS OF PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LOUISIANA	*	NUMBER CA-83-2612
VERSUS	*	
W. T. LANGLEY, ET AL	*	

CONSOLIDATED WITH

W. T. LANGLEY, ET AL	*	NUMBER CA-84-0555
VERSUS	*	
PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, ET AL	*	

NOTICE OF MOTION

TO: William Shelby McKenzie
Taylor, Porter, Brooks & Phillips
P. O. Box 2471
Baton Rouge, LA 70821

John L. Olivier
Olivier & Brinkhaus
P. O. Drawer E
Sunset, LA 70584

Leo J. Lahey
Law Offices of Warren D. Rush
P. O. Box 53713-O.C.S.
Lafayette, LA 70505

William C. Shockey
McCollister, McCleary, Fazio & Holliday
5757 Corporate Boulevard
Suite 301
P. O. Box 2706
Baton Rouge, LA 70821-2706

PLEASE TAKE NOTICE that the undersigned counsel for the Federal Deposit Insurance Corporation will bring on for hearing the attached Motion for Summary Judgment on the _____ day of _____, 1985, at _____ o'clock _____ .m., or as soon thereafter as counsel can be heard, before the Honorable John Duhe, United States District Judge, at the United States District Court, Lafayette, Louisiana.

Dated: January 24, 1985

By Attorneys,

KANTROW, SPAHT, WEAVER & BLITZER
P. O. Box 2997
Baton Rouge, LA 70821-2997
Telephone (504) 383-4703

By: /s/ David S. Rubin
Lee C. Kantrow
David S. Rubin
Richard F. Zimmerman, Jr.
Lois E. Hawkins
Bob D. Tucker

FEDERAL DEPOSIT INSURANCE CORPORATION
Barry Zisman, Senior Attorney
Richard E. Ulmer, Attorney

CERTIFICATE

I hereby certify that a copy of the above and foregoing has this day been mailed, postage prepaid, to all counsel of record.

Baton Rouge, Louisiana, this 24 day of January, 1985.

/s/ David S. Rubin
David S. Rubin

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LOUISIANA/FEDERAL DEPOSIT INSURANCE CORPORATION, IN ITS CORPORATE CAPACITY AS ASSIGNEE OF THE ASSETS OF PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LOUISIANA	*	NUMBER CA-83-2612
VERSUS	*	
W. T. LANGLEY, ET AL	*	

CONSOLIDATED WITH

W. T. LANGLEY, ET AL	*	NUMBER CA-84-0555
VERSUS	*	
PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, ET AL	*	

MOTION FOR SUMMARY JUDGMENT

COMES NOW the Federal Deposit Insurance Corporation, through undesigned counsel, which respectfully moves this Court for Summary Judgment as to (1) all claims asserted by it in the petition filed herein against defendants, W. T. Langley and Mary Ann Grimes, Langley and (2) all claims asserted against it in the petition filed herein by W. T. Langley and Mary Ann Grimes Langley, on the ground that there is no genuine dispute as to any material fact and that mover is entitled to judgment as a matter of law.

Dated: January _____, 1985 By Attorneys,

KANTROW, SPAHT, WEAVER & BLITZER

P. O. Box 2997
Baton Rouge, LA 70821-2997
Telephone (504) 383-4703

By: /s/ David S. Rubin
Lee C. Kantrow
David S. Rubin
Richard F. Zimmerman, Jr.
Lois E. Hawkins
Bob D. Tucker

FEDERAL DEPOSIT INSURANCE CORPORATION
Barry Zisman, Senior Attorney
Richard E. Ulmer, Attorney

CERTIFICATE

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Baton Rouge, Louisiana, this 24 day of January, 1985.

/s/ David S. Rubin
David S. Rubin

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LOUISIANA/FEDERAL DEPOSIT INSURANCE CORPORATION, IN ITS CORPORATE CAPACITY AS ASSIGNEE OF THE ASSETS OF PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, LOUISIANA	*	NUMBER CA-83-2612
VERSUS	*	
W. T. LANGLEY, ET AL	*	

CONSOLIDATED WITH

W. T. LANGLEY, ET AL	*	NUMBER CA-84-0555
VERSUS	*	
PLANTERS TRUST & SAVINGS BANK OF OPELOUSAS, ET AL	*	

STATE OF LOUISIANA
PARISH OF LAFAYETTE

BEFORE ME, the undersigned Notary Public, personally came and appeared:

WILLIAM E. SMITH

who, after being duly sworn by me, did depose and say:

He is employed by the Federal Deposit Insurance Corporation as the Liquidator of Planters Trust & Savings Bank of Opelousas, Louisiana, and that in such capacity has personal knowledge of the matters to which he will now attest.

The Federal Deposit Insurance Corporation is a corporation organized and existing under the laws of the United States, with its principal place of business in the city of Washington, District of Columbia. On May 18, 1984, the Commissioner of Financial Institutions for the State of Louisiana (the "Commissioner") declared Planters Trust & Savings Bank of Opelousas, Louisiana ("Planters") to be in an unsafe and unsound condition, closed Planters, and took possession of its books, property, and affairs. The Commissioner appointed the FDIC (in its receivership capacity) as receiver and liquidator thereof, and the FDIC accepted such appointment. Pursuant to La. R.S. §6:457, upon the acceptance by the FDIC of its appointment as receiver and liquidator, the possession of and title to all of the assets, business, and property of the banking institution, of every kind and nature, passed to and vested in the FDIC as receiver without the execution of any instruments of conveyance, assignment, transfer or endorsement. Subsequently on May 18, 1984, pursuant to an order of the Twenty-Seventh Judicial District Court for the Parish of St. Landry, the FDIC in its corporate capacity acquired all of the assets of Planters, including (but not limited to) the assets which are the subject of this suit.

Defendants, W. T. Langley and Mary Ann Grimes Langley, both residents of the full age of majority and domiciled in the County of Mississippi, State of Arkansas, are justly and truly indebted unto the Federal Deposit Insurance Corporation jointly and severally for the following, to-wit: Promissory Note #104638, dated Opelousas, LA, March 8, 1982, in the principal sum of $468,124.41, made payable to Planters Trust and Savings Bank at its banking office in Opelousas, Louisiana 70570, payable in three (3) annual installments of $104,164.54 each, including interest, and one final installment sufficient to pay the balance due, the first installment being due and payable on the 8th day of March, 1983, and one installment being due and payable on the 8th day of each succeeding year thereafter until all have been paid, together with interest to be computed at the rate more fully shown on such promissory note and as amended; said Promissory Note was made and executed by W. T. Langley and by Mary Ann Grimes Langley, through her agent and attorney-in-fact, W. T. Langley, as more fully shown by reference to the Power of Attorney dated December 16, 1980, a correct copy being filed of record herein, and made a part hereof by reference as though set forth herein in extenso; a correct copy of said Promissory Note being filed of record

herein and made a part hereof by reference as though set forth herein in extenso, the principal balance due on said note being $468,624.41, together with interest to January 21, 1985, in the amount of $227,879.15, and, thereafter, the additional sum of interest to be computed at the rate more fully shown on such Promissory Note and as amended, until the full amount of principal and interest is paid in full, together with the additional sum of twenty-five (25%) percent as attorney's fees and all costs of this suit, said Promissory Note being secured by a pledge and assignment of the following collateral security, to-wit:

> Collateral Mortgage Note dated Bunkie, La. December 19, 1980, due on demand and payable to the order of Planters Trust & Savings Bank, Opelousas, LA., in the principal sum of Five Hundred Thousand and No/100 ($500,000.00) Dollars, bearing interest at the rate of twelve (12%) percent per annum from date until paid, as well as the additional sum of twenty-five (25%) percent as attorney's fees and all costs of this suit, said Collateral Mortgage Note being executed by W. T. Langley and Mary Ann Grimes Langley, through her agent and attorney-in-fact, W. T. Langley, as more fully shown by reference to the Power of Attorney dated December 16, 1980, a correct copy being attached hereto and marked Exhibit "D" for identification herewith and made a part hereof by reference as though set forth herein in extenso, a correct copy of the said Collateral Mortgage Note being attached hereto and marked Exhibit "B" for identification herewith and made a part hereof by reference as though set forth herein in extenso, in turn being secured by a Collateral Mortgage of even date therewith for the same amount payable at Planters Trust & Savings Bank, a Louisiana banking corporation domiciled in Opelousas, La., and being recorded in Mortgage Book 130, Entry No. 83, Pointe Coupee Parish Recorder's Office, a correct copy of such Collateral Mortgage being attached hereto, and marked Exhibit "C" for identification herewith and made a part hereof by reference as though set forth herein in extenso.

The act of Collateral Mortgage specially mortgages, affects and hypothecates in favor of the Holder or Holders of the said note the property described therein.

The Promissory Note further provides that any failure on the part of

the maker or makers to pay any installment thereof, or the interest thereon, promptly when due, shall ipso facto, and without any demand or putting in default, cause said note and each and every installment thereof to become immediately due and exigible and putting in default specially waived; that because of the non-payment of such promissory note in accordance with its tenor, the note is in default.

Defendants W. T. Langley and Mary Ann Grimes Langley executed continuing guarantees, dated January 27, 1982, guaranteeing existing or future debts of W. T. Langley to Planters, up to an unlimited amount, copies of which guarantees are filed of record herein.

The FDIC, as holder of the aforementioned note, is the proper party to seek the recovery of said note herein.

/s/ William E. Smith

William E. Smith

SWORN TO AND SUBSCRIBED before me this 24 day of January, 1985.

/s/ David S. Rubin

Notary Public

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

January 12, 1987

Mr. William C. Shockey
McCollister & McCleary, et al.
5757 Corporate Blvd., P.O. 2706
Baton Rouge, LA 70821

RECEIVED JAN 14

Re: W. T. Langley, et ux.,
V. Federal Deposit Insurance Corporation
No. 86-489

Dear Mr. Shockey:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is granted.

Very truly yours,

/s/ Joseph F. Spaniol, Jr.

Joseph F. Spaniol, Jr., Clerk

Supreme Court, U.S.
FILED
MAR 19 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-489

In the Supreme Court of the United States

OCTOBER TERM, 1986

W.T. LANGLEY AND MARY ANN GRIMES LANGLEY,
Petitioners

v.

FEDERAL DEPOSIT INSURANCE CORPORATION
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS ON THE MERITS

WILLIAM C. SHOCKEY
McCOLLISTER McCLEARY & FAZIO
5757 Corporate Boulevard, Suite 301
Post Office Box 2706
Baton Rouge, La. 70821
Telephone: (504) 927-1600
Counsel for Petitioners

PETITION FOR A WRIT OF CERTIORARI FILED ON SEPTEMBER 23, 1986
WRIT OF CERTIORARI GRANTED ON JANUARY 12, 1987

QUESTIONS PRESENTED

I. Whether the statutory language of 12 U.S.C. 1823(e) barring oral agreements between an obligor and a failed bank from being asserted as a defense against a suit on a promissory note by the Federal Deposit Insurance Corporation encompasses situations where the makers of the note assert that officers of the failed bank made factual misrepresentations which induced them to execute the note.

II. Whether federal common law provides further protection to the Federal Deposit Insurance Corporation from defenses raised by makers of notes acquired by the Federal Deposit Insurance Corporation from a failed bank beyond the statutory protection provided by 12 U.S.C. 1823(e).

PARTIES TO THE PROCEEDINGS

Federal Deposit Insurance Corporation (as successor to Planters Trust and Savings Bank)

W. T. Langley

Mary Ann Grimes Langley

Roy E. Caughfield

Federal Land Bank of Jackson

Elmer Landry

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BEST A

In the Supreme Court of the United States

OCTOBER TERM, 1986

NO. 86-489

W.T. LANGLEY AND MARY ANN GRIMES LANGLEY,
PETITIONERS

versus

FEDERAL DEPOSIT INSURANCE CORPORATION,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS ON THE MERITS

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 792 F.2d 541 (5th Cir. 1986) and is reprinted in the original Petition For a Writ of Certiorari as Appendix A, pp. A1-A18. The opinion of the District Court granting respondent's motion for summary judgment is reported at 615 F. Supp. 749 (W. D. La. 1985) and is reprinted in the original Petition For a Writ of Certiorari as Appendix B, pp. A19-A25.

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JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on June 24, 1986. The petition for a writ of certiorari was filed on September 23, 1986. The petition was granted on January 12, 1987. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATUTE INVOLVED

This case involves the interpretation of § 2(13)(3) of the Federal Deposit Insurance Act of 1950, as amended, codified as 12 U.S.C. 1823(e) as follows:

> "No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank."

STATEMENT OF THE CASE

On October 3, 1980, a purchase agreement was entered into by W. T. Langley, a resident of Blytheville, Arkansas, and Leenerts Farms, Inc. ("Leenerts") for a farm containing "a total of 1,600 acres, more or less" in Pointe Coupee Parish, Louisiana, (hereinafter the "Melville Property"). The actual acquisition of the Melville property occurred on December 19, 1980. Financing for the purchase was provided to the Langleys by the Federal Land Bank in the amount of $1,350,000.00, secured by a first mortgage on the property and by Planters Trust and Savings Bank ("Planters") in the amount of $450,000.00, secured by a second mortgage in the amount of $500,000.00 on the property. The balance owed on the Planters note, including interest, was renewed on January 27, 1982 and again on March 8, 1982. This latter note was sued upon by Planters in Louisiana state court in September, 1983. (J.A. p. 35.) The Langleys removed this action to the United States District Court for the Western District of Louisiana on the basis of diversity jurisdiction. On

October 18, 1983, the Langleys filed a complaint in the United States District Court for the Middle District of Louisiana, alleging a right to affirmative recovery from Planters and the other defendants therein in excess of $5,000,000.00. (J.A. pp. 46-57.) Subsequently, both actions were consolidated in the Western District of Louisiana. On October 5, 1984, four months after Planters was declared to be in an unsafe and unsound condition, the FDIC was substituted as a party plantiff in these consolidated proceedings. On June 10, 1985, the FDIC in its capacity as receiver of Planters was substituted as a party defendant in the action filed by the Langleys. As the holder of the Langleys' note to Planters, the FDIC then moved for summary judgment. (J.A. p. 122.) As a defense against the claims on the promissory notes by Planters and the Federal Land Bank ("FLB"), the Langleys allege in their action for affirmative recovery that Elmer Landry (formerly President of the Federal Land Bank Association of Opelousas) and Roy Caughfield (formerly President of Planters), both of whom are defendants in the District Court, fraudulently induced the Langleys to sign the Planters note and all preceding notes by certain statements, claims, representations, inducements, and omissions knowingly made by Caughfield and Landry, individually and on behalf of Planters and the FLB, respectively. The Langleys allege that but for these misrepresentations, inducements, and omissions by Caughfield and Landry, individually and on behalf of Planters and the FLB, respectively, they would not have purchased the Melville property and signed the promissory notes herein sought to be enforced. (J.A. p. 50.) Thus, the Langleys seek a declaration that the promissory notes and mortgages of Planters and the FLB are unenforceable, null and void for failure or want of cause and, alternatively, for error occurring as a result of the fraudulent misrepresentations, inducements, and omissions of the defendants or, in the further alternative, limiting enforcement of the notes and mortgages to the property itself.

Specifically, the Langleys allege that:

1) Rather than the 1,628.4 acres represented orally, in the sale itself, and on a map prepared by or on behalf of the FLB, the Melville property consists of only 1,522 acres;
2) Rather than receiving 400 mineral acres as was orally represented to the Langleys, only approximately 75 mineral acres were transferred;

BEST AVA

3) Caughfield, individually and on behalf of Planters, represented that no outstanding mineral leases burdened the property when in truth and fact, there existed an outstanding mineral lease held by Chevron, U.S.A. and, furthermore, the executive rights were held by another third party, John Barton; and

4) The defendants engaged in a pattern of racketeering activity reprobated by 18 U.S.C. 1961, et seq., in that they have repeatedly used the United States mails and other interstate communications to further their fraudulent scheme which was designed to induce the Langleys to purchase the Melville property in order to rescue Planters from loans made to the prior owners of the Melville property which were in default (and who went bankrupt 3 months after the purchase), and to generate certain "fees" and "commissions" for Landry and Caughfield. (J.A. p. 53.)

In answers to interrogatories, the Langleys have further asserted that Caughfield, individually and on behalf of Planters, made verbal representations in the presence of witnesses, on five or six occasions, that Leenerts owned 1,628.4 surface acres and 400 mineral acres that would be conveyed to the Langleys. (J.A. pp. 104-106.) The purchase agreement and the sale stated that 1,628.4 total acres were to be conveyed along with one-half of the mineral rights owned by Leenerts. (J.A. pp. 16, 17, 19.)

On May 18, 1984, *seven months after the Langleys instituted their suit against Planters*, the Commissioner of Financial Institutions for the State of Louisiana declared Planters to be in an unsafe and unsound condition, closed Planters and took possession of its books, property, and affairs. (J.A. p. 91.) The Commissioner appointed the Federal Deposit Insurance Corporation (in its receivership capacity, the "FDIC") as receiver and liquidator thereof and the FDIC accepted such appointment. (J.A. p. 92.) Pursuant to LSA-R.S. 6:457, upon the acceptance by the FDIC of its appointment as receiver and liquidator, the possession of and title to all of the assets, business, and property of the banking institution, of every kind and nature, passed to and vested in the FDIC as receiver without the execution of any instruments of conveyance, assignment, transfer or endorsement. Subsequently on May 18, 1984, pursuant to an order of the Twenty-Seventh Judicial District Court for the Parish of St. Landry, State of Louisiana, the FDIC in its corporate capacity ac-

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quired all of the assets of Planters, including the assets which are the subject of this suit, in a "purchase and assumption" transaction.

As early as April 6, 1984, *the FDIC had actual knowledge of the Langleys' claims* that the property purchased was not as represented to be and that the Langleys had sued Planters Bank. (J.A. pp. 63, 66.)

The District Court granted the FDIC's motion for summary judgment on the basis that 12 U.S.C. 1823(e) shields the FDIC from the affirmative defenses of the Langleys on the Planters note. The District Court noted, however, that there is authority for the Langleys' proposition that § 1823(e) does not encompass situations where the maker of a note asserts fraud in the inducement of the underlying obligation. (P. p. A-23.) The District Court also noted that there was no clear controlling precedent from the Fifth Circuit on this issue. Given the importance of a clear precedent on this issue and the possibility that district courts in the Fifth Circuit will be faced with similar issues arising out of the collapse of Planters and other banks, the Langleys appealed.

The Fifth Circuit affirmed the District Court's judgment on the basis of § 1823(e) holding that the Langleys are attempting to assert a part of their total side agreement with Planters to vary the terms of their loan. (P. p. A-16.) While it is true that the Langleys alleged in their complaint for affirmative recovery that both factual misrepresentations and promissory misrepresentations were made by Planters and that the latter may be construed as "agreements", the lower court is simply incorrect in asserting that the Langleys are attempting to rely on promissory misrepresentations to vary or add terms to the loan documents they executed. (P. p. A-16.) Rather, the promissory misrepresentations were made by Planters in conjunction with a fraudulent scheme to induce the Langleys to enter into a loan agreement with Planters. The Langleys contend that no agreement existed because of the factual misrepresentations. The Langleys have never attempted to assert the promises by Planters regarding the terms of the loan as valid against the FDIC. In fact, the lower court does not explicitly reject the distinction between factual fraud and promissory fraud in the the application of § 1823(e) which has been recognized by other courts. (P. p. A-15 n. 5.)

SUMMARY OF ARGUMENT

The Langleys contend that the statutory language of 12 U.S.C. 1823(e), which bars oral agreements between an obligor and a failed bank from being asserted as a defense against a suit on a promissory note acquired by the FDIC, does not encompass the situation where the makers of the note assert that factual fraud committed by a bank's officers induced the underlying obligation. The statutory language of § 1823(e) applies specifically to an "agreement which tends to diminish or defeat" the FDIC's right to collect an asset acquired from a failed bank. Thus, case law interpreting the statute has distinguished between two types of fraud in the inducement in determining whether that section is applicable. One type is an oral promise by a bank to perform a duty in connection with the execution of a note that it does not intend to perform. An example of such fraud in the inducement is a promise by the bank that the makers will not have to make any payments on the loan until the property securing the loan is sold by the makers. Another type of fraud in the inducement is a knowing misrepresentation made by the bank, not involving any promise, to induce a party to execute a promissory note. An example of such fraud in the inducement is a misrepresentation made by a bank that a given company is in sound financial condition in order to induce a party to borrow money to purchase stock in the company.

The Langleys' claims fall into the latter type of fraudulent inducement as several of the misrepresentations and omissions made by Planters and alleged in the Langleys' original complaint are not agreements of any sort. Rather, the Langleys assert that because of the factual misrepresentations made to them and the fraud practiced upon them, their consent to the transaction was not lawfully given. Without consent lawfully given, there is no consent and without consent there is no agreement. If there is no agreement, § 1823(e), by its own terms, does not apply.

In 1950, Congress codified the holding of *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956 (1942) into § 1823(e). This Court has held that when Congress addresses a question previously governed by a decision rested on federal common law, the need to rely on federal common law to decide a case disappears. Congress has now spoken directly to the question of the protection of the FDIC from defenses raised by obligors of notes which are acquired by the FDIC from failed banks. Consequently, the

enactment of § 1823(e) has preempted the federal common law arising out of the *D'Oench* case.

Therefore, the FDIC is not entitled to a summary judgment against the Langleys on the Planters note. The present judgment must be reversed and this case must be remanded to the District Court for a trial on the merits.

ARGUMENT

I. *12 U.S.C. 1823(e) DOES NOT APPLY WHEN A BANK'S FACTUAL MISREPRESENTATIONS INDUCE A BORROWER TO EXECUTE A PROMISSORY NOTE*

When the FDIC acquires the assets and liabilities of a failed bank in a purchase and assumption transaction, it is entitled to the statutory protection of 12 U.S.C. 1823(e) against "agreement(s)" between the failed bank and obligors of notes owned by the failed bank which would diminish or defeat the right of the FDIC to enforce the obligations owned by the failed bank. The rule of § 1823(e) is derived from the case of *D'Oench, Duhme, & Co. v. FDIC*, 315 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956 (1942) which holds that federal law controls the rights and obligations of the FDIC.

12 U.S.C. 1823(e) provides:

> "No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank."

§ 1823(e) by its terms protects the FDIC only from "agreement(s)" not satisfying the section's requirement. In *Gunter v. Hutcheson*, 674 F.2d 862 (11th Cir. 1982), *cert. denied*, 459 U.S. 826, 103 S.Ct. 60, 74 L.Ed.2d 63 (1982), and *FDIC v. Hatmaker*, 756 F.2d 34 (6th Cir. 1985), the Eleventh and Sixth Circuits have adopted an interpretation of § 1823(e) which distinguishes between

two types of fraud in the inducement in determining whether that section is applicable. One type is an oral promise by the bank to perform a duty in connection with the execution of a note that it does not intend to perform. An example of such fraud in the inducement is a promise by the bank that the makers will not have to make any payments on the loan until the property securing the loan is sold by the makers. Another type of fraud in the inducement is a knowing misrepresentation made by the bank, not involving any promise, to induce a party to execute a promissory note. An example of such fraud in the inducement is a representation made by a bank that a given company is in sound financial condition in order to induce a party to borrow money to purchase stock in the company.

In the latter type of fraud in the inducement, there is no "agreement" between the parties; rather, a material misrepresentation regarding the subject matter of the loan fraudulently induces the borrower's consent to the transaction. The Langleys claim that the representations made to them regarding the nature of the property purchased are so material to their consent that the proven falsity of these representations by an officer of the failed bank will negate the entire transaction. Thus, rather than attempting to hold a side agreement with the failed Planters Bank valid, the Langleys seek to prove that there was never an agreement at all because their consent was unlawfully obtained. Under Louisiana law, without valid consent there can be no agreement. Louisiana Revised Civil Code (former) Articles 1779, 1819 and 1824. As a result, § 1823(e) is not applicable to this case. § 1823(e) by its explicit language applies only to an "agreement" between a bank customer and the failed bank.

In *Gunter*, supra, the makers of a promissory note in favor of a failed bank brought suit against the failed bank, after it failed, and some of its officers and the FDIC. The FDIC had entered into a purchase and assumption agreement by which the FDIC purchased the note from another bank to which all of the failed bank's assets had been transferred. The makers of the note sought rescission of the note against the FDIC asserting the violation of various securities laws and fraud as a result of actions taken by officers of the failed bank. Specifically, the makers alleged that in connection with the purchase of bank stock, the chairman of the board fraudulently represented that the bank was in "sound financial condition." The FDIC moved for summary judgment on the basis that it was protected against the customer's fraud claims by § 1823(e) or under federal common law.

The Eleventh Circuit Court of Appeals held that the claims by the makers of the note held by the FDIC were not barred by the statutory language in § 1823(e). 674 F.2d at 867.

The *Gunter* Court analyzed several decisions of the Fifth Circuit which all held that § 1823(e) shielded the FDIC from the defenses raised by the borrowers in those cases.

In *Black v. FDIC*, 640 F.2d 699 (5th Cir. 1981), *cert. denied*, 454 U.S. 838, 102 S. Ct. 143, 70 L. Ed. 2d 119 (1981), an obligor attempted to prove that a real estate development loan agreement with a bank included the unwritten understanding to make construction loans on certain real estate. The Court held that the statutory protection of § 1823(e) shielded the FDIC from assertion of the alleged oral side agreements against an insolvent bank. 640 F.2d at 701. In *FDIC v. Hoover Morris Enterprises*, 642 F.2d 785 (5th Cir. 1981), the obligor contended that a bank had agreed to take a deed in satisfaction of the debt sued upon. The court held that the agreement could not be asserted against the FDIC under § 1823(e). 642 F.2d at 787. In *Chatham Ventures, Inc. v. FDIC*, 651 F.2d 355 (5th Cir. 1981), *cert. denied*, 454 U.S. 1126, 102 S. Ct. 975, the obligors claimed that the bank breached a joint venture agreement to advance further funds for development expenses for certain real estate. The Court held that the alleged oral joint venture agreement failed to meet the statutory writing requirement of § 1823(e) for such an agreement to be assertable against the FDIC. 651 F.2d at 362. In *FDIC v. Lattimore Land Corp.*, 656 F.2d 139 (5th Cir. 1981), the obligor asserted that the bank breached an alleged promise to make future loans to develop real estate. The court held that § 1823(e) shielded the FDIC from this unwritten side agreement. 656 F.2d at 142. Undoubtably, the FDIC can cite many other cases with similar factual circumstances where § 1823(e) has been applied to shield the FDIC; however, *the statute does not say that the FDIC always wins*.

With regard to the above-noted cases, the *Gunter* court reasoned:

> "The common thread running through these cases had been the assertion by the obligor that an oral side agreement with the bank controlled the rights of the parties. The cases, therefore, came squarely within the 'no agreement . . . shall be valid' language of § 1823(e)." 674 F.2d at 867.

The *Gunter* court went on to point out the difference between those cases and the case at bar:

"The claim asserted by the Gunters, in contrast, is quite different. The essence of their argument is that no agreement existed because of the fraud of (the failed bank's) officers. While certain of the alleged misrepresentations could be construed as 'agreements' to perform certain acts in the future, such as deferring interest on the Gunters' notes, others clearly are not agreements of any sort . . . Far from claiming that an oral agreement is 'valid' and controls the rights of the parties, the Gunters assert that the entire transaction was invalid from the beginning. As the district court noted, this claim is directly opposite to the 'shall be valid' language of § 1823(e). Consequently, we agree with the trial court that the fraud claims at issue here are not barred by the statutory language in § 1823." 674 F.2d at 867.

The *Gunter* rationale has been approved by the Sixth Circuit Court of Appeals in the recent case of *Hatmaker*, supra, where the Court stated:

"Under § 1823(e), the case law has distinguished between two types of fraud in the inducement in determining whether that section is applicable. *Gunter v. Hutcheson*, 674 F.2d 862, 867 (11th Cir. 1982), *cert. denied*, 459 U.S. 826, 103 S. Ct. 60, 74 L. Ed. 2d 63 (1982). One type of fraud in the inducement is an oral promise by the bank to perform a duty in connection with the execution of a note that the bank does not intend to perform. An example of such fraud in the inducement is a promise by the bank to make future loans to the borrower which the bank does not plan to perform. See *FDIC v. Lattimore Land Corp.*, 656 F.2d 139 (5th Cir. 1981). Another type of fraud in the inducement is a misrepresentation made by the bank, not involving any promise, to induce a party to execute a promissory note. A good example of such fraud in the inducement is a misrepresentation by the bank that it is in sound financial condition in order to induce a party to borrow money to purchase its stock. *Gunter*, 674 F.2d at 867.

In the second type of fraud in the inducement, no side agreement exists between the parties, and § 1823(e) cannot be applicable. In the first case, however, a side agreement is present to which § 1823 can be applied. Although that side agreement may have been fraudulently induced, it is still a separate agreement into which the parties voluntarily entered." 756 F.2d at 36-37.

Further support for this distinction is found in the case of *In Re Longhorn Securities Litigation*, 573 F. Supp. 278 (W. D. Okla.

1983), where the court noted that both linguistically and legally, a representation is not an agreement. 573 F.Supp. at 282. *Black's Law Dictionary* defines a representation as a "(s)tatement of fact made to induce another to enter into a contract," *Black's Law Dictionary* (5th Ed. 1979), p. 1169, whereas an agreement is defined as "a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances." *Webster's* defines a representation as "a statement or account, especially made to convey a particular view or impression of something with the intention of influencing opinion or action," *Webster's Third New International Dictionary* (1981), p. 1926, whereas an agreement is defined as "the act of agreeing or coming into a mutual arrangement."

Clearly, an intentional misstatement of fact by a bank officer which serves to fraudulently induce a borrower's consent to a transaction involving the bank is not an "agreement" with the bank which causes the bank's assets to be overstated; rather, the bank has deceived the borrower for the purpose of acquiring an asset. The assertion that factual misrepresentation diminishes or defeats the right, title or interest of the FDIC in the asset after the bank fails is not equivalent to the assertion of an "agreement". Since an agreement is by definition an accord of understanding and intention between two parties, if a party's understanding is premised upon untrue facts, the truth being known only by one party, then the other party's consent to an agreement premised upon misrepresented facts is not based on the common knowledge and intention of the parties and, therefore, cannot be an agreement. The assertion that factual misrepresentation invalidates a borrower's consent to a transaction involving an insured bank does not assert as "valid" against the FDIC an "agreement" that is reprobated by § 1823(e).

We must assume that the legislative purpose of the statute is expressed by the ordinary meaning of the words used. *U. S. v. Locke*, 471 U.S. 84, 105 S.Ct. 1785, 85 L.Ed.2d 64 (1985). There is no ambiguity in the meaning of the words of § 1823(e). When the terms of a statute are unambiguous, judicial inquiry is complete, except in rare and exceptional circumstances. *Rubin v. U.S.*, 449 U.S. 424, 430, 101 S.Ct. 698, 701, 66 L.Ed.2d 633 (1981); *Crooks v. Harrelson*, 282 U.S. 55, 60, 51 S.Ct. 49, 50, 75 L.Ed. 156 (1930). Where the meaning of the statute is clear, it must be enforced as written. *McFeely v. Commissioner*, 296 U.S. 102, 111, 56 S.Ct. 54, 80 L.Ed.

83, 90 (1935); *U. S. v. Martin*, 337 F.2d 171, 174 (8th Cir. 1964); *Hilliard v. U.S.*, 310 F.2d 631, 632 (6th Cir. 1962). The Langleys ask no more and no less.

In the instant case, the Langleys do in fact assert that there were promissory misrepresentations concerning repayment of the note. (J.A. p. 50.) The Langleys concede that the shield of § 1823(e) protects the FDIC against their claims that the transaction should be rescinded as a result of representations made by Roy Caughfield, President of Planters, that the Langleys would have no personal liability on the notes, that the Langleys would not be required to make any payments on the subject loan until the property was sold and that the interest rate on the loan would be two (2%) percent above the prime rate of Chase Manhattan Bank. However, other misrepresentations alleged by the Langleys are clearly not agreements of any sort. For example, the Langleys allege in Paragraph 23 of their original Complaint that the defendants represented that no outstanding mineral leases burdened the property when in truth and in fact there existed an outstanding mineral lease and, furthermore, the executive rights were held by another third party, John Barton. (J.A. p. 51.) Also, according to the answers to interrogatories, Landry and Caughfield claimed that the land included within its boundaries a certain number of surface acres and that the Langleys would obtain a certain percentage of mineral rights in the land. (J.A. pp. 100, 104, 105, 106.) It is also alleged in the original Complaint that representations were made or facts were omitted by the defendants with the intention of convincing the Langleys to purchase property without being possessed of all the facts which defendants knew would be necessary for the Langleys to consider in order to make an informed decision regarding the purchase of the property and the terms thereof. (J.A. p. 50.) The Langleys have alleged in pleadings and have sworn in their answers to interrogatories that these representations were made. These are not claims of agreements; these are claims of representations. The Langleys are not attempting to hold any side agreement with the failed Planters Bank valid; rather, the Langleys' claims made in the original and amended Complaints, if proven, negate the entire transaction. § 1823(e), essentially a statute of frauds enacted for the benefit of the FDIC, does not bar claims of fraud.

Seizing on the fact that the Langleys have conceded that § 1823(e) protects the FDIC from the promissory misrepresentations made by Planters regarding the terms of the Planters loan and repayment of the

note, the lower court held that the Langleys are attempting to assert a part of their total side agreement to vary the terms of the loan. (P. p. A-16.) The Fifth Circuit Court of Appeals effectively held that if one of the defenses a party has cannot be asserted against a party, then none of that party's defenses can be asserted. How can the rejection of one defense automatically require the rejection of another?

The Fifth Circuit has apparently inferred that the Langleys did not rely on the factual misrepresentations in light of their admitted reliance on collateral oral agreements as well. The question of reliance can only be determined after trial on the merits.[1] The Langleys contend that for purposes of the applicability of § 1823(e), the only relevant allegations are their claims of misrepresentations and fraud concerning the characteristics of the property which they purchased. The Langleys filed suit against Planters and other defendants approximately seven (7) months prior to the failure of Planters at a time

[1]Summary judgment should be entered only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law". Fed.R.Civ.P. 56(c). See *Adickes v. S. H. Kress & Company*, 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, 26 L.Ed.2d 142 (1970). The mover has the burden of showing the absence of a genuine issue as to any material fact and inferences to be drawn from underlying facts contained in the moving party's materials must be viewed in the light most favorable to the party opposing the motion. *Ibid.* It is not the judge's function to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, ____ *U.S.* ____, *106 S.Ct. 2505, 2511 (1986)*. There is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 288-289, 88 S.Ct. 1575, 1592, 20 L.Ed.2d 569 (1968). Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the factual inferences that should be drawn from these facts. *Lighting Fixture & Electric Supply Co. v. Continental Insurance Company*, 420 F.2d. 1211, 1213 (5th Cir. 1969). If reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment. *Croley v. Matson Navigation Co.*, 434 F.2d 73, 75 (5th Cir. 1970).

When the factual issues have not been tried, appellate review of the District Court's judgment is under the rigid standards attendant upon the entry of summary judgment under Rule 56 of the Federal Rules of Civil Procedure rather than under the "clearly erroneous" doctrine of Rule 52(a), Fed.R.Civ.P. *McAllister v. United States*, 348 U.S. 19, 75 S.Ct. 6, 99 L.Ed. 20 (1954). This case having been decided upon a motion for summary judgment by the FDIC, these rules must be kept in mind in considering the correctness of the result.

when the misrepresentations concerning the terms of the loan were assertable against the Bank. The fact that the misrepresentations concerning the terms of the loan appear as allegations in the Langleys' suit, but are not assertable against the FDIC after the failure of Planters, does not mean that the Langleys are attempting to assert them as valid against the FDIC in violation of § 1823(e). Rather, the alleged factual misrepresentations are independently sufficient to invalidate the Langleys' consent to the transaction. There never was an agreement because the Langleys' consent was based on misrepresented facts. The Langleys could not anticipate that the FDIC would become a party to their suit. Further, there are other parties defendant who do not enjoy the statutory protection available to the FDIC. It is to these defendants that the other allegations of the Langleys' complaint must be directed. Indeed, the Langleys have asserted that the conduct of the defendants in this case is reprobated under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq. (J.A. p. 53.)

The distinction between factual misrepresentations and promissory misrepresentations recognized by the Eleventh and Sixth Circuits is based upon the plain meaning of the text of the statute; it will not lead to absurd results or thwart the purpose of the statute. *In Re Trans Alaska Pipeline Rate Cases,* 436 U.S. 631, 643, 98 S.Ct. 2053, 2061, 56 L.Ed.2d 591 (1978). Congress clearly did not intend anything less than an agreement between the obligor and the bank to be barred by law as against the FDIC. In situations where factual misrepresentation precludes an agreement between the borrower and the bank, the fact that the bank's asset is saddled with unknown defects is due solely to the fraud of the bank officer committed upon an innocent borrower. The absurdity of applying the bar of § 1823(e) in this situation is revealed. Congress obviously did not intend that bank officers be licensed to commit fraud in acquiring assets for the bank and then prevent innocent borrowers from asserting the fraud practiced by bank officers as against the FDIC after the bank fails. Such a rule places an unwarranted burden on a borrower who happens to borrow money from a bank that fails. Further, such a rule is clearly not justified by the plain wording of § 1823(e).

The Langleys' theory of fraudulent inducement as a result of the aforesaid factual misrepresentations is simply not a doctrine based on the parties' mutual assent. The Langleys contend that the Planters note is invalid and that such invalidity is caused by representations

intended to deceive the borrowers into executing the note. These false representations amount to factual fraud and are not barred by § 1823(e) from being asserted against the FDIC.

II. *APPLICATION OF FEDERAL COMMON LAW IS PREEMPTED BY SECTION 1823(e)*

The FDIC is expected to vigorously contend that federal common law affords a shield to it against the claims of borrowers such as the Langleys and, further, that this shield is separate and distinct from the protections afforded the FDIC under § 1823(e). As will become apparent hereafter, the federal common law rule of *D'Oench, Duhme & Co. v FDIC*, supra, has not survived the enactment of § 1823(e).

As this Court has previously held, federal courts, unlike state courts, are not general common law courts and do not possess a general power to develop and apply their own rules of decision. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 822, 82 L.Ed. 1188 (1938); *United States v. Hudson and Godwin*, 7 Cranch 32, 3 L.Ed. 259 (1812); *City of Milwaukee v. Illinois and Michigan*, 451 U.S. 304, 101 S.Ct. 1784, 68 L.Ed.2d 369 (1981). The federal judiciary is generally not charged with responsibility for the enactment of a federal rule in an area of national concern, thereby displacing state law in doing so. This function is reserved to Congress, which is composed of the elected representatives of the people. *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 68, 86 S.Ct. 1301, 1304, 16 L.Ed.2d 369 (1966). In *City of Milwaukee*, this Court recognized the coexistent responsibilities of Congress and the federal judiciary in ruling that a federal court could not generally apply a federal rule of decision in the absence of an applicable act of Congress. 451 U.S. at 313, 101 S.Ct. at 1790.

Despite its earlier pronouncements in *Erie*, this Court has in some circumstances found it necessary to assume a lawmaking function. In a "few and restricted" instances, this Court has found it necessary to develop federal common law. *Wheeldin v. Wheeler*, 373 U.S. 647, 651, 83 S.Ct. 1441, 1445, 10 L.Ed.2d 605 (1963). The development of federal common law is confined to those circumstances where (1) Congress has not spoken to a particular issue; and (2) where there exists a "significant conflict between some federal policy or interest and the use of state law," *Wallis*, supra at 68, 86 S.Ct. at 1304. See, e.g. *Clearfield Trust Co. v. United States*, 318 U.S. 363, 367, 63 S.Ct. 573, 575, 87 L.Ed. 838 (1943).

In *D'Oench, Duhme & Co. v. FDIC*, supra, this Court, faced in 1942 with a circumstance in which there was no positive statutory law regarding the bank customer's civil liability, fashioned a rule of federal common law, holding that the maker of a note was estopped as against the FDIC from enforcing a secret agreement (written on a receipt but not on the notes themselves) that the notes would never be repaid. 315 U.S. at 460, 62 S.Ct. at 681. In so doing, the Court pointed out the existence of a federal policy designed to protect the FDIC and the public funds which it administers against misrepresentation as to the security held in the portfolio of banks insured by the FDIC. 315 U.S. at 457, 62 S.Ct. at 679. This federal policy was gleaned from § 12B(s) of the Federal Reserve Act, 12 U.S.C. 264(s) as it then existed. § 12B(s) was a criminal statute and did not purport to regulate the civil liability of the bank's customer. There was simply no statute on point at that time. Congress enacted the Federal Deposit Insurance Act of 1950, which included 12 U.S.C. 1823(e) in its original form. We now have a statute which regulates the civil liability of customers of failed banks. Federal common law has been supplanted.

This Court has long recognized that the federal common law is "subject to the paramount authority of Congress." *City of Milwaukee v. Illinois and Michigan*, supra, 451 U.S. at 313; 101 S.Ct. at 1791; *New Jersey v. New York*, 283 U.S. 336, 348, 51 S.Ct. 478, 481, 75 L.Ed. 1104 (1931); *Northwest Airlines v. Transport Workers Union*, 451 U.S. 77, 101 S.Ct. 1571, 67 L.Ed.2d 750 (1981). Federal common law is only resorted to "(i)n the absence of an applicable act of Congress." *Clearfield Trust*, supra at 367, 63 S.Ct. at 575. The *D'Oench* court recognized that the court is compelled to consider federal questions "which cannot be answered from the federal statutes alone." *D'Oench*, supra, 315 U.S. at 469, 62 S.Ct. at 684. (Jackson, J., concurring). When Congress addresses a question previously governed by a decision rested on federal common law, the need for such an extraordinary exercise of lawmaking authority by a federal court disappears. *Northwest Airlines*, supra, 451 U.S. at 94, 101 S.Ct. at 1583; *Illinois v. Milwaukee*, 406 U.S. 91, 107, 92 S.Ct. 1385, 1394, 31 L.Ed.2d 712 (1972); *City of Milwaukee v. Illinois and Michigan*, 451 U.S. at 314, 101 S.Ct. at 1791. This point was dramatically recognized in *Illinois v. Milwaukee* itself, 406 U.S. at 107, 92 S.Ct. at 1394 ("New federal laws and new federal regulations may in time preempt the field of the federal common law of

nuisance."), in *Arizona v. California*, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542 (1963) wherein the Court declined to apply the federal common law doctrine of equitable apportionment it had previously developed and in *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 98 S.Ct. 2010, 56 L.Ed.2d 581 (1978) wherein this Court refused to provide damages for "loss of society" under the general maritime law since Congress had not provided such damages under the Death on the High Seas Act.

A review of these decisions leads one to conclude that the operative question is whether or not the legislative scheme "spoke directly to a question" and not whether Congress had affirmatively proscribed the use of federal common law. In the present case, Congress has spoken directly to the question at hand. Congress has, in § 1823(e), enacted a statute regulating the circumstances in which the defenses of a borrower against a failed bank may be asserted against the FDIC. The commitment to the separation of powers is too fundamental to continue to rely on federal common law by judicially decreeing what accords with "common sense and the public weal" when Congress has addressed the problem. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 194, 98 S.Ct. 2279, 2301, 57 L.Ed.2d 117 (1978). "There is a basic difference between filling a gap left by Congress' silence [as was done in 1942 by the *D'Oench* court] and rewriting rules that Congress has affirmatively and specifically enacted." (As the FDIC seeks in the case at bar). *Mobil Oil Corp.*, 436 U.S. at 625, 98 S.Ct. at 2015, 56 L.Ed.2d at 581. Deference to the supremacy of the legislature, as well as recognition that Congressmen typically vote on the language of a bill, generally requires us to assume that the legislative purpose is expressed by the ordinary meaning of the words used. *Richards v. United States*, 361 U.S. 1, 9, 82 S.Ct. 585, 591, 7 L.Ed.2d 492 (1962); *United States v. Locke*, supra, 105 S.Ct. at 1793.

The FDIC was established under authority of Section 8 of the Banking Act of 1933, and Section 101 of the Banking Act of 1935 which provided the permanent plan of deposit insurance contained in existing law. As noted above, prior to 1950, no statute regulated the situation where a bank customer entered into a secret agreement with a bank that served to misrepresent the bank's assets to the FDIC. The Federal Deposit Insurance Act of 1950 represents a rather comprehensive revision of the prior law. The principal changes made by the Act were:

"... (a) the increase in the insurance coverage from $5,000 to $10,000; (b) the simplification in the computation of the assessment base; (c) the reduction in years in which the Corporation does not encounter undue losses, in the cost of deposit insurance to the banks by making provision for a credit to them of a percentage of the net assessment paid each year; (d) the expansion of examination authority to enable the Corporation to examine any insured bank or any bank seeking insurance; and (e) the payment to the Treasury of interest at 2 percent on capital funds originally provided by the Treasury and the Federal Reserve banks. . . ." 1950 U.S. Code Cong. Service, p. 3767.

Although there is no clear indication in the legislative history, one must assume that the enactment of § 1823(e) was intended to address the gap in the law which was noted in *D'Oench*. The statute specifically enumerates the conditions which must be satisfied in order for an agreement between an obligor and a bank, which may affect the value of a bank asset, to be asserted as valid against the FDIC. Congress has now spoken directly to the question of the protection enjoyed by the FDIC in the situation where an agreement between an obligor and a failed bank may affect the value of a bank asset. Certainly, the statute does not address every situation which may affect the value of bank assets when the FDIC seeks to collect them, but when the statute does speak directly to a question, the courts are not free to supplement Congress' answer so that the meaning and intent of the statute is ignored. *Mobil Oil Corp. v. Higginbotham*, supra at 625, 98 S.Ct. at 2015. One cannot ignore the meaning of the key word in the statute - "agreement". As noted above, Congress obviously intended that nothing less than an agreement between an obligor and a bank should be barred by law as against the FDIC if the statute's requirements are not satisfied. Before hastening to "fill a gap" in the statute relating to factual misrepresentations by a bank which induce a borrower to execute a note by the use of federal common law, this Court must consider whether it would be providing a different rule to shield the FDIC from borrower defenses based upon its own judgment of what the rule should be. *City of Milwaukee v. Illinois*, supra at 324, n. 18, 101 S.Ct. at 1796 n. 18. Commendably, the lower court in this case declined to take this additional step. (P. p. A-15, n. 5).

For the foregoing reasons, the FDIC may not claim additional protection from borrower defenses under federal common law.

CONCLUSION

Fraudulent and knowing misrepresentations made by a bank to induce a party to execute a promissory note are not within the ambit of 12 U.S.C. 1823(e) because such misrepresentations are not "agreements" which tend to diminish or defeat the right, title, or interest of the FDIC in an asset acquired from a failed bank. Certain allegations made by the Langleys in their original complaint are not in the nature of agreements which are sought to be asserted against the FDIC; rather, the Langleys assert fraudulent and knowing misrepresentations by a bank officer induced them to sign a promissory note, making the entire transaction invalid from its inception. Therefore, the Langleys' fraud claims are not barred by the statutory langauge of § 1823(e) and the FDIC is not entitled to a summary judgment on the basis of § 1823(e).

Federal common law provides no solace for the FDIC. The fashioning of federal common law is appropriate only where Congress has failed to enact a statutory rule. Congress has acted through the passage of 12 U.S.C. 1823(e) and a resort to federal common law is inappropriate.

For these reasons, the summary judgment in favor of the FDIC must be reversed and this matter remanded to the District Court for further proceedings.

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I, William C. Shockey, a member of the bar of this Court, certify that pursuant to Rule 28 of this Court, I have served three (3) copies of the Brief for Petitioners on the Merits on respective counsel for the Respondent by enclosing a copy thereof in an envelope, first class postage prepaid properly addressed to:

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No. 86-489

In the Supreme Court of the United States

OCTOBER TERM, 1986

W. T. LANGLEY and MARY ANN GRIMES LANGLEY,
PETITIONERS

v.

FEDERAL DEPOSIT INSURANCE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

The Federal Deposit Insurance Corporation (FDIC) seeks to enforce a note acquired from a failed bank. The debtors on the note allege that, as part of an unrecorded arrangement that varied the terms of the written instrument, the bank orally made fraudulent factual representations that the debtors relied on in agreeing to the loan transaction. The question presented is whether 12 U.S.C. 1823(e) or federal common law precludes the debtors from relying on the alleged oral understandings to invalidate their written loan obligation.

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In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-489

W. T. LANGLEY and MARY ANN GRIMES LANGLEY,
PETITIONERS

v.

FEDERAL DEPOSIT INSURANCE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A18) is reported at 792 F.2d 541. The opinion of the district court (Pet. App. A19-A25) is reported at 615 F. Supp. 749.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1986. The petition for a writ of certiorari was filed on September 23, 1986, and was

granted on January 12, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

12 U.S.C. 1823(e) provides as follows:

> No agreement which tends to diminish or defeat the right, title or interest of the [Federal Deposit Insurance] Corporation in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank.

STATEMENT

1. In 1980 petitioners bought farm land owned by Leenerts Farms, Inc., in Pointe Coupee Parish, Louisiana.[1] The property was conveyed to petitioners by a cash deed (J.A. 16-23). The deed identifies the property as located inside two tracts of land and gives detailed descriptions of the particular parcels within the two tracts that were conveyed and, in

[1] This case comes to the Court on a grant of summary judgment to the Federal Deposit Insurance Corporation ("FDIC"). Accordingly, we accept petitioners' factual allegations as true for purposes of the appeal.

"save and except" clauses, the acreage that was held by third parties and excluded from the sale (J.A. 18-20). After indicating the total acreage, the deed states that both tracts were subject to numerous mineral leases (involving Chevron, Inc., and John Barton, among others) and to an assignment of all of Leenerts Farms' mineral interests to Don I. Williams (J.A. 20-22). These conditions were also disclosed to petitioners in a title opinion received from their attorney prior to the closing of the transaction (J.A. 7-15).

In negotiating for the purchase of the land, as well as in obtaining financing for the purchase, petitioners dealt primarily with Elmer Landry, President of the Federal Land Bank Association of Opelousas, Louisiana, and Roy E. Caughfield, President of the Planters Trust & Savings Bank of Opelousas, Louisiana (Planters or Bank).[2] Petitioners borrowed a total of $1,800,000 from the two banks—$1,350,000 from the Federal Land Bank of New Orleans (Federal Land Bank); $450,000 from Planters.[3] The purchase price of the land was $1,635,000; with roughly $100,000 of the remaining $165,000 in borrowed funds, petitioners bought a certificate of deposit from Planters (J.A. 66). Both the Federal Land Bank's loan and Planters' loan were secured by mortgages on the Leenerts Farms property.

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[2] Planters was insured by the FDIC but was not a member of the Federal Reserve System. The FDIC therefore was the Bank's primary federal regulator (12 U.S.C. 1817(a)(2)).

[3] The FDIC's examination report indicates that $455,000 was disbursed (J.A. 66). For purposes of this appeal, we adopt petitioners' figure of $450,000.

The closing of the Planters loan of $450,000 took place on December 19, 1980. In connection with the closing, petitioners executed in favor of Planters a collateral mortgage note, personal guarantees, and a collateral mortgage, which borrowed their descriptions of the mortgaged property from the cash deed (J.A. 24-38) and were unconditional on their face: by their terms, the documents fully obligated petitioners to repay their debt in the manner specified. Planters subsequently renewed the note on January 27, 1982, and again on March 8, 1982. Pet. App. A3.

Despite the apparent completeness of the written instruments, petitioners have alleged that they were induced to accept the payment obligations by various fraudulent representations made orally by Landry and Caughfield. The alleged representations were as follows (Pet. App. A4-A5):

1. That petitioners would have no personal liability on their loans and personal guaranties;
2. That no payments would be due from them until the property was resold;
3. That petitioners "would be provided a purchaser" for the property;
4. That petitioners would "realize a large profit" on reselling the property;
5. That the property consisted of 1,628.4 acres;
6. That the property included 400 mineral acres;
7. That there were no mineral leases on the property; and
8. That the purchase price would be 100% financed.

These alleged oral representations, including those relieving petitioners of their liability and their payment obligations as well as those concerning acreage and mineral rights, were inconsistent with the bank documents. See Pet. App. A5 (petitioners "do not contend" and the court of appeals "has not found, that these alleged warranties or loan terms were contained in the promissory note, guaranty, or mortgage executed by [petitioners]"). Petitioners have further alleged that they provided certain payments characterized as "fees" and "commissions" to both Landry and Caughfield in connection with this transaction (Pet. Br. 4). Specifically, Landry received $16,000 and a note for $24,000 (J.A. 114),[4] and Caughfield received mineral interests in the farm property in return for his participation in the transaction (*ibid.*).

Nothing in the written loan agreements executed by petitioners and Planters discloses the existence or character of any side agreements or understandings that might vary petitioners' payment obligations or the descriptions of the mortgaged property set forth in the loan papers. Nor does any reference to the oral side arrangement appear either in the books or records of Planters or in the board or committee minutes kept by the Bank. For roughly three years following the loan transaction, the FDIC had no knowledge of the alleged representations (Pet. Br. 5; J.A. 63): during that period, the Bank's records would thus have been materially incomplete and misleading.

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[4] Officers of FDIC-insured banks and officers of Federal Land Bank Associations may be subject to criminal prosecution for agreeing to accept such fees (18 U.S.C. 215).

2. In 1983, petitioners failed to pay the first installment due under the March 1982 note (the note). Planters commenced suit on the note on September 26, 1983 (J.A. 39-45). Petitioners responded by filing a countersuit against Planters, Caughfield, and Landry,[5] alleging that they had been fraudulently induced to sign the note by the various representations made orally in the side arrangement (J.A. 46-54). The two cases were subsequently consolidated in the United States District Court for the Middle District of Louisiana.

On May 18, 1984, the Commissioner of Financial Institutions for the State of Louisiana closed Planters and appointed the FDIC as receiver (J.A. 90). The FDIC immediately implemented a "purchase and assumption" transaction, under which all of Planters' deposit liabilities and most of its assets were transferred to another FDIC-insured bank in the community (the assuming bank) (see 12 U.S.C. 1823 (c)(2)(A)). Because the amount of liabilities greatly exceeded the value of transferred assets, the FDIC paid $36,992,000 to the assuming bank from its deposit insurance fund (see FDIC 1984 Annual Report, Table 123, at 47). In consideration of this cash outlay, the FDIC in its corporate capacity received, among other Planters assets, petitioners' note. The FDIC was then substituted for Planters in the pending litigation.

On June 20, 1985, the district court granted the FDIC's motion for summary judgment on the note

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[5] Petitioners subsequently amended their complaint to add the Federal Land Bank of New Orleans (now known as the Federal Land Bank of Jackson) as a defendant (J.A. 57).

(Pet. App. A19-A26).[6] The court held that 12 U.S.C. 1823(e) barred petitioners' fraudulent-inducement defense to enforcement of the loan obligation, concluding that the alleged side arrangement with Planters could not alter the terms of facially valid written instruments. The court found it unnecessary to decide whether federal common law required the same result.[7]

3. The court of appeals affirmed (Pet. App. A1-A18). Petitioners conceded that 12 U.S.C. 1823(e) barred them from relying on any of the "promissory" representations as a defense to their written obligation; in particular, they withdrew any claim based on the nonrecourse nature of the loan, the absence of any payment obligation until resale, and the promise to find a subsequent purchaser (Pet. App. A7). They argued, however, that Section 1823(e) did not apply to factual misrepresentations—here, the alleged representations concerning the total acreage of the purchased land and its mineral rights (Pet. App. A7). The court of appeals rejected this proposed distinction between promissory and factual fraud.

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[6] The motion was made by the FDIC in its corporate capacity, as holder of the note, although the FDIC was also substituted for Planters in its capacity as receiver. Unless otherwise indicated, the FDIC is hereafter referred to only in its corporate capacity.

[7] Subsequently, the district court certified its ruling in favor of the FDIC for appeal. Also, the district court granted summary judgment in favor of the Federal Land Bank, and that judgment was affirmed on appeal (*FDIC* v. *Langley*, 792 F.2d 547 (5th Cir. 1986)). There have been no further proceedings on petitioners' claims against Caughfield, Landry, or the FDIC in its capacity as receiver.

The court pointed out that Section 1823(e) was intended "to ensure that the FDIC may rely on the books and records of an insured institution by requiring that material agreements concerning a loan transaction be set forth in the bank's records" (Pet. App. A9). This requirement that all material terms of a loan appear in the bank's written records is necessary to enable FDIC examiners to carry out their duty to examine banks for soundness as well as to make full information available when the FDIC must determine how to deal with a failed bank (*id.* at A10). To permit petitioners' proposed distinction, the court concluded, would defeat those purposes: "By not insisting that Planters' promises and agreements be included in the loan documents—assurances which [petitioners] concede go to the heart of their loan transaction—[petitioners] lent themselves to a loan transaction that withheld the key aspects of their loan transaction from bank regulators" (*id.* at A12-A13).

The court of appeals noted that the Eleventh and Sixth Circuits have suggested, though not actually held, that a fraudulent factual representation might not be covered by Section 1823(e) (*FDIC* v. *Hatmaker*, 756 F.2d 34, 36-37 (6th Cir. 1985); *Gunter* v. *Hutcheson*, 674 F.2d 862, 867 (11th Cir.), cert. denied, 459 U.S. 826 (1982)). The court observed, however, that this case did not simply involve such "factual fraud." Rather, petitioners relied on factual misrepresentations that were part and parcel of an undisclosed "total side arrangement to vary the terms of their loan" (Pet. App. A16). The court concluded that petitioners' effort "to shift the focus of their defense would create an unacceptable 'end run' around § 1823(e)" (*id.* at A17).

SUMMARY OF ARGUMENT

I. The language of Section 1823(e) readily encompasses all representations relied on in entering into a loan transaction. A factual representation thus relied on is an "agreement" in the nature of a warranty just as a promise is. Moreover, the fraudulent nature of the representation, though it may mean that there is no agreement in the subjective sense, does not alter the fact that, in the commonly used objective sense, there was an "agreement" between the parties.

This interpretation is necessary if the FDIC is to fulfill its mandate. The FDIC is responsible for continual examination of insured banks in order to ensure their safety and soundness; it is also responsible, when an insured bank fails, for determining quickly whether to liquidate the bank (and pay depositors to the limit of the insurance liability) or to arrange for a takeover of the bank. Those functions require that bank examiners be able to rely on the books and records of the bank—to assess the bank's strength, to measure the degree of risk to the deposit insurance fund, and to liquidate the bank's assets, should the need arise. Even before Congress enacted 12 U.S.C. 1823(e) in 1950, federal common law principles barred a debtor from raising defenses to limit the value of a bank asset based on oral agreements with the failed bank or on schemes or arrangements that would tend to mislead bank examiners. Section 1823(e), which supplements the common law principles, serves the same purposes and must be construed to permit FDIC examiners, both while a bank is apparently healthy and when it fails, to treat the bank's assets exactly as they appear on the bank's books.

Because the statute is designed to enable the FDIC to rely on the integrity of bank records as fully and continuously disclosing all material terms of a bank's loans, the statute prohibits use of unrecorded understandings to defeat written obligations, regardless of the bank's fraudulent intent. It also prohibits a debtor from relying on unwritten factual representations as well as unwritten promises. Such representations present no less danger to the integrity of bank records than do promises, and the statutory policy of insisting that material terms of a loan be recorded where examiners can see them applies whatever the term. Moreover, the statute applies regardless of whether the debtor had any actual intent to deceive the examiners and regardless of whether the examiners somehow manage to discover the hidden terms.

II. If petitioners' defense is not barred by Section 1823(e), it is precluded by federal common law. The question whether petitioners have a valid defense to their written note, like all questions of law in a civil action involving the FDIC in its corporate capacity, is governed by federal law (see 12 U.S.C. 1819 Fourth). As the lower courts have uniformly recognized, the existence of Section 1823(e), which forbids the recognition of certain defenses to a written obligation, does not require that federal common law recognize other defenses, such as petitioners'. Section 1823(e) does not eliminate the need to determine whether federal common law permits petitioners' defense.

Federal common law precludes recognition of petitioners' defense to their note for two reasons. First, the defense is barred under this Court's decision in

D'Oench, Duhme & Co. v. *FDIC*, 315 U.S. 447 (1942) (*D'Oench*), which held that a debtor who lends himself to a scheme or arrangement that would tend to mislead bank examiners cannot raise any terms or conditions of that scheme or arrangement as a defense against the FDIC in a suit on the note. The *D'Oench* doctrine applies notwithstanding an allegation of fraud by a co-participant in the scheme. The doctrine not only encourages debtors to insist that all loan terms be recorded in bank records, but reflects the equitable principle that, if a loss is to be incurred as a result of a fraudulent unrecorded arrangement, the loss should fall not on the national insurance fund (and hence on depositors nationwide) but on the person who lent himself to (and could have avoided) the side arrangement.

Second, a uniform rule of federal common law refusing to permit challenges to written obligations based on arrangements not reflected in bank records is warranted under *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715, 726-727 (1979). Such a rule would protect the nationwide insurance fund by furthering the vital federal policy requiring that the FDIC be able to rely on bank records in performing its functions. And the rule would cause no significant interference with local banking practices, because written instruments are already the norm in the banking world.

ARGUMENT

I. 12 U.S.C. 1823(e) Bars Petitioners' Defense To Their Written Loan Obligation Based On Unrecorded Representations Allegedly Relied On In Assuming The Obligation

Petitioners seek to invalidate their note to the failed bank based on oral statements made by an officer of the bank as part of a side agreement that the note would not mean what it says. They concede (Pet. Br. 12) that the oral agreement itself may not be asserted against the FDIC and that, among the false statements made as part of the agreement, those which were in the form of promises (*e.g.*, the nonrecourse nature of the loan, the absence of any payment obligation until resale, the promise to find a subsequent purchaser) likewise cannot alter the written note.[8] Petitioners contend (Pet. Br. 12-

[8] As petitioners' concession regarding Section 1823(e)'s coverage of promissory fraud makes clear, an agreement within the meaning of Section 1823(e) is not only invalid in the sense that it cannot be enforced; no such agreement is "valid against the Corporation" (12 U.S.C. 1823(e)) in any way that would "diminish or defeat the right, title or interest" (*ibid.*) of the FDIC in the written obligation. Thus, an agreement covered by the statute cannot be asserted to invalidate the written obligation any more than it can be asserted as a separate valid agreement. Otherwise, the prohibition in Section 1823(e) would be readily evaded in virtually every case, because every claim alleging an oral agreement that purports to modify a written obligation could be framed as a claim that the written obligation itself was unenforceable. All of the courts of appeals recognize this, including those which have suggested a distinction between factual and promissory fraud. See, *e.g.*, *FDIC* v. *O'Neil*, 809 F.2d 350, 354-355 (7th Cir. 1987); *FDIC* v. *Hatmaker*, 756 F.2d at 37; *FDIC* v. *Merchants National Bank*, 725 F.2d 634, 639 (11th Cir.), cert. denied, 469 U.S. 829 (1984). See also *FDIC* v. *Rodenberg*, 571

14), however, that some of the statements made by the bank officer (*i.e.*, those concerning acreage and mineral rights) were factual "representations" and, for that reason alone, not "agreements" within the meaning of 12 U.S.C. 1823(e). This argument should be rejected; it is not supported by the statutory language and is inconsistent with congressional policy and the statute's history.

A. Section 1823(e)'s Language Broadly Encompasses All Unwritten Understandings Material To A Written Loan Obligation

Section 1823(e), as applied to a note acquired from a bank by the FDIC, declares that "[n]o agreement which tends to diminish or defeat the right, title or interest of the [FDIC]" in the note "shall be valid against the [FDIC]" unless the agreement is in writing, was executed contemporaneously with the bank's acquisition of the note, was approved by the bank's loan committee or board of directors, and was "continuously, from the time of its execution, an official record of the bank."[9] Contrary to petitioners' suggestion (Pet. Br. 11), this language encompasses fraudulent factual as well as promissory representations relied on by a debtor in making a note to the bank. Such representations are in essence war-

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F. Supp. 455, 459 (D. Md. 1983) ("To permit the defendant to raise these representations in the defense of fraudulent or negligent misrepresentations—while barring their admission as collateral agreements—would allow the defendant to make an 'end run' around § 1823(e).").

[9] Congress has provided the National Credit Union Administration the same protections when it acquires assets from a failed credit union (12 U.S.C. 1787(i)(2)).

ranties, and "a warranty is an agreement" (93 C.J.S. *Warranty* 556 (1956)).

Under the nearly universal law governing the sale of goods, "[a]ny affirmation of fact or promise" that relates to the goods or "[a]ny description of the goods," if a basis of the bargain, creates a warranty (U.C.C. § 2-313(1)(a) and (b)). See *Black's Law Dictionary* 1758 (4th rev. ed. 1968) (a warranty in a contract is "[a]n undertaking or stipulation, in writing, or verbally, that a certain fact in relation to the subject of a contract is or shall be as it is stated or promised to be"). Commercial law thus recognizes no distinction pertinent here between promissory and factual representations; the mere form of words—whether a description or guarantee or warranty or promise—does not alter the legal effect of the representation. Both promissory and factual representations are warranties and, hence, agreements (once the offer is accepted). Nothing in Section 1823(e)'s use of the term "agreement" suggests a different result when a bank makes representations that become a basis of a bargain about the terms of a loan.

Nor does the fraudulent intent of the bank render a factual representation any less an "agreement" within the meaning of Section 1823(e). As petitioners effectively concede, fraudulent intent in making a promissory representation does not remove the representation from the coverage of Section 1823(e). There is no reason for factual representations to be treated any differently. In any event, one common meaning of the term "agreement" is an objective one, which looks not to the subjective intent of the parties but only to their words and conduct. Thus, "[a]greement consists of mutual expressions; it does not consist of harmonious intentions or states of mind"

(1 A. Corbin, *Contracts* § 9, at 20 (1963)). "An agreement in the broadest sense of the word is a manifestation of mutual assent," and "[t]hough the assent must be mutual it need not be actual in a subjective sense. A real 'meeting of the minds' is not necessary to an agreement * * *" (L. Simpson, *Handbook of the Law of Contracts* § 3, at 2-3 (2d ed. 1965)). See also Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 464 (1897) (emphasis omitted) ("[T]he making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs,—not on the parties' having meant the same thing but on their having said the same thing."). An "agreement" in this sense—a sense suited to policies designed to influence conduct and to protect third parties—exists even if one party has fraudulent intent and even though the agreement may not be a legally enforceable contract. Under this common construction of the key term in Section 1823(e), allegedly fraudulent warranties are plainly covered.

B. The Core Functions Of The FDIC Require That The FDIC Be Able To Rely On The Written Records Of Insured Banks

Section 1823(e)'s language must be construed "within the framework of the complex statutory scheme that the FDIC administers" (*FDIC* v. *Philadelphia Gear Corp.*, No. 84-1972 (May 27, 1986), slip op. 5-11). The functions entrusted to the FDIC require that the statutory language be given its broad, objective meaning, one that encompasses all representations relied on by the maker of a note. The FDIC's statutory mission of preserving the integrity of the nation's banking system demands that it be able to rely on the books and records of FDIC-insured banks.

Following the spate of bank runs in the early years of the Great Depression, Congress created the FDIC and the system of deposit insurance in 1933 (Banking Act of 1933, ch. 89, § 8, 49 Stat. 168) to restore confidence in and stability to the nation's banking system. See S. Rep. 1821, 86th Cong., 2d Sess. 2-5 (1933); *FDIC* v. *Philadelphia Gear Corp.*, slip op. 6-8. The statute, as originally enacted and as recodified and renamed in 1950 (Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1811 *et seq.*), establishes an insurance fund financed by bank premiums (12 U.S.C. 1817) and directs the FDIC to administer the fund and to make payments, within prescribed limits, to depositors in failed insured banks (12 U.S.C. 1821). Recognizing that the protection of depositors and the preservation of depositor confidence depends on the protection of the insurance fund, Congress gave the FDIC and other federal bank regulatory agencies authority to supervise FDIC-insured banks with an eye toward preventing bank failures and their adverse impact on the fund. See *First State Bank* v. *United States*, 599 F.2d 558, 563 (3d Cir. 1979), cert. denied, 444 U.S. 1013 (1980) ("If bank examinations by the FDIC reveal any irregularities or fraud, such examinations, though they may inure incidentally to the benefit of [the] bank, are intended primarily for the [benefit] of the insurance fund.").

The FDIC is empowered to examine any FDIC-insured bank (12 U.S.C. 1819 Eighth and 1820(b)). It may conduct its own examinations or rely on examinations conducted by other federal or state banking authorities (12 U.S.C. 1817(a)(2) and 1820 (b)). If banking regulators discover that a bank is operating in an unsafe or unsound manner, they may take action to curb the offending practices in order

to restore the bank to health (12 U.S.C. 1818); alternatively, the FDIC may decide to protect the fund by terminating the bank's deposit insurance (*ibid.*). Bank examinations are critical to the FDIC's ability to carry out its duties of protecting the integrity of the nation's banking system by helping banks avoid failure and preserving the health of the insurance fund. See 79 Cong. Rec. 6808 (1935) (remarks of Rep. Brown on Banking Act of 1935 (ch. 614, 49 Stat. 684)) ("The constructive results of a thorough examination constitute the best single instrument by which the [Federal Deposit Insurance] Corporation can reduce loss from bank failures.").[10] In turn, effective examinations are not possible if a bank's books and records do not clearly disclose the true value of the bank's assets—if resort to testimony or evidence outside the bank's records is needed to evaluate the health of an insured institution.

In addition to examining and supervising banks on a regular basis, the FDIC is also charged with the responsibility to deal with the failure of insured banks.[11] In the event of a failure, the FDIC must

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[10] "The Federal Deposit Insurance Corporation is not an institution of charity. It is as much a business proposition as banking itself. Its function is not merely to pay losses in the event insured banks are forced to close. Even more important is its obligation to forestall such losses by building up and supporting its member institutions." 79 Cong. Rec. 6808 (1935).

[11] The FDIC does not have authority to close banks. National banks may be closed only by the Comptroller of the Currency (12 U.S.C. 191), but the Comptroller must appoint the FDIC to serve as receiver for a closed national bank (12 U.S.C. 1821(c)). State banks are closed by state bank regulatory authorities, but the FDIC must act as receiver of a closed

determine which of two statutorily available alternatives it should use to minimize the loss to its insurance fund while preserving confidence in the stability of the banking system. One alternative is outright liquidation of the bank (see 12 U.S.C. 1821). The other is implementation of a "purchase and assumption" transaction (12 U.S.C. 1823(c)(2)(A)), whereby the FDIC arranges for another bank to purchase and immediately to reopen the failed institution, with the FDIC insurance fund paying the assuming bank for the difference between liabilities and assumed assets and then attempting to minimize the loss to the fund by collecting on the assets taken by the FDIC rather than the assuming bank (see *Gunter* v. *Hutcheson*, 674 F.2d at 865-866). The latter option is generally preferable for a number of widely recognized reasons. See *FDIC* v. *Wood*, 758 F.2d 156, 160-161 (6th Cir. 1985), cert. denied, No. 84-1952 (Nov. 4, 1985); *FDIC* v. *Merchants National Bank*, 725 F.2d at 637-638; Burgee, *Purchase and Assumption Transactions Under the Federal Deposit Insurance Act*, 14 The Forum 1146 (1979); see also *Doty* v. *Love*, 295 U.S. 64 (1935). A purchase and assumption transaction protects all bank depositors, whether insured or not; it protects all depositors fully, not merely up to the limit of the deposit insurance; and it avoids the spectre of a closed bank and the corresponding disruption of banking services in the community (*FDIC* v. *Wood*, 758 F.2d at 160-161; *Gunter* v. *Hutcheson*, 674 F.2d at 865-866).

Notwithstanding those advantages, Congress has strictly limited the use of the purchase and assump-

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state bank if asked to do so by state authorities (12 U.S.C. 1821(e)).

tion option. Because of the overriding goal of protecting the nationwide insurance fund, in almost all cases a purchase and assumption transaction may be implemented by the FDIC only if it is less costly to the insurance fund than a liquidation (12 U.S.C. 1823(c)(4)(A)).[12] If the true value of a bank's assets is not readily apparent to bank examiners, the FDIC will be unable to make the required calculation accurately. As a result, the FDIC may be deterred from adopting the preferred means of dealing with a bank failure or may make the wrong decision, thereby damaging statutory policies and the nationwide insurance fund. Those risks are especially great because the choice between liquidation and execution of a purchase and assumption must be made "with great speed, usually overnight" (*Gunter* v. *Hutcheson*, 674 F.2d at 865) so that the failed bank's doors are not closed for even a single business day.

In short, ensuring that bank records accurately reflect the value of bank assets such as notes is critical to the FDIC's ability to carry out its responsibilities for dealing with bank failures, just as it is critical to the FDIC's ability to carry out its continuing duty to examine and to supervise banks that have not failed.

C. The Background And Legislative History Of Section 1823(e) Demonstrate Congress's Intent That The FDIC Be Able To Rely On Written Bank Records

The judicial and legislative background to Section 1823(e)'s enactment make clear that the provision

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[12] The FDIC can provide assistance without performing this "cost test" only in the rare instance where it determines that the continued operation of a bank is essential to provide adequate services to that bank's community (12 U.S.C. 1823(c)(4)(A)).

was designed to enable the FDIC to rely on written bank records and to protect the FDIC against all side agreements. The statute should therefore be construed to require, insofar as the FDIC is concerned, that obligors insist that all terms material to their loan obligations be recorded in the bank's records in accordance with the statute's stringent requirements.

1. Even prior to Congress's enactment of the provision at issue in this case in 1950 (FDI Act, ch. 967, § 2(13), 64 Stat. 888), this Court and other federal courts had recognized that both creditors and examiners are entitled to protection against claims not reflected in a bank's books and records. Thus, it had long been established that one who provides a note to a bank under an agreement that it will not be enforced, and thereby enables a bank to misstate the true value of its assets, is liable to a receiver of the bank in an action on the note and is estopped from asserting conditions contrary to the express terms of the note. *E.g.*, *O'Keefe* v. *Equitable Trust Co.*, 103 F.2d 904, 908-909 (3d Cir. 1939); *Pauly* v. *O'Brien*, 69 F. 460 (C.C. S.D. Cal. 1895); see *Bryan* v. *Bartlett*, 435 F.2d 28, 34-37 (8th Cir. 1970), cert. denied, 402 U.S. 915 (1971); see also 7 C. Zollman, *Banks and Banking* § 4738, at 281 (1936) (footnotes omitted) ("Attempts to bolster up the apparent assets of a bank by notes procured from responsible persons under a secret promise by the bank officer negotiating in the matter that the makers will not be held on them are all too frequent and deserve condemnation."). This Court elaborated on and extended this principle of federal common law in *Dietrick* v. *Greaney*, 309 U.S. 190 (1940), and in *D'Oench, Duhme & Co.* v. *FDIC*, 315 U.S. 447 (1942).

In *Dietrick* v. *Greaney*, *supra*, the Court held that the maker of an accommodation note, which was executed to conceal a stock purchase transaction forbidden by a provision of the National Bank Act (12 U.S.C. 83), was estopped from arguing lack of consideration in a suit on the note by the receiver of the payee, a national bank. The Court specifically rejected the argument that it was necessary to prove damage from reliance or otherwise to establish the elements of an equitable estoppel (309 U.S. at 197-199): "It is the evil tendency of the prohibited acts at which the statute is aimed, and its aid, in condemnation of them, and in preventing the consequences which the Act was designed to prevent, may be invoked by the receiver representing the creditors for whose benefit the statute was enacted." The Court observed that the provisions of the National Bank Act that require periodic examinations of and reports by national banks (12 U.S.C. 161, 481) "are designed to insure prompt discovery of violations of the Act and in that event prompt remedial action" (309 U.S. at 195). Refusing to allow the accommodation maker to raise a defense to the note, the Court concluded, was necessary to avoid defeating those disclosure policies and the statutory stock-purchase prohibition (*ibid.*).

In *D'Oench*, the Court, again recognizing that "the integrity of ostensible [bank] assets has a direct relation to solvency" (315 U.S. at 461), prohibited the maker of a note from raising a defense to its enforcement even where the maker had no intent to deceive. After bonds sold by the petitioner to a bank were dishonored when presented for payment, the petitioner executed two notes payable to the bank so that the bank could carry the notes as assets and not show any past-due bonds. Any proceeds from the bonds were to be credited to the notes, but it was agreed,

in a writing evidently not recorded on the bank's books, that the notes would not otherwise be called for payment. When the bank failed, the FDIC in its corporate capacity acquired the notes as collateral for a loan and sued to collect on them.

The Court rejected the petitioner's arguments that it should not be liable on the note because it had received no loan proceeds and it had a written agreement with the bank that the notes would not be enforced. Those ordinary contract defenses could not be raised, the Court held, because the maker had "lent itself" to a scheme or arrangement that would tend to mislead bank examiners and the public (315 U.S. at 460). The maker had participated in an arrangement that operated not only as a deception of bank examiners but also as a continuing inducement to existing creditors of the bank and to those who might become creditors to rely on the note as counting toward the bank's solvency (*id.* at 472-473 (Jackson, J., concurring)).

That creditors or bank examiners may not in fact have been deceived or specifically injured was held to be immaterial: as in *Dietrick*, it was the " 'evil tendency' of the acts to contravene the policy governing banking transactions which lies at the root of the rule" barring the maker's defenses (315 U.S. at 459). See also *id.* at 461 ("The federal policy expressed in the [National Bank] Act, like its counterpart in state law, is not dependent on proof of loss or damage caused by the fraudulent practice."). Nor was it significant that the notemaker's conduct may not have constituted a crime (misstating a bank's assets). The Court stated (*id.* at 460 (emphasis added)):

> [T]he inability of an accommodation maker to plead the defense of no consideration does not

> depend on his commission of a penal offense. The test is whether the note was designed to deceive creditors or the public authority, *or would tend to have that effect.* It would be sufficient in this type of case that the maker lent himself to a scheme or arrangement whereby the banking authority on which respondent relied in insuring the bank was *or was likely to be misled.*

Nor, finally, was it relevant whether the maker intended to deceive anyone; the maker of the note was charged with knowledge of the tendency of its actions to mislead (*id.* at 459).

In short, *D'Oench* established a broad rule protecting FDIC against—and hence deterring borrowers from participating in—any arrangement that is likely to make bank records misleading, even where there are no damages or actual deception of creditors or bank examiners and even where the maker had no intent to deceive. This rule supplemented criminal prohibitions similarly designed to ensure that the FDIC could accurately determine the soundness of insured banks. See, *e.g.*, 18 U.S.C. 1005 and 1014.

2. It was against this background that, as part of the FDI Act, Congress in 1950 enacted the provision now codified at Section 1823(e). While *D'Oench* and its progeny involved debtors who had lent themselves to deceptive arrangements, there was uncertainty about the enforceability against the FDIC of "good faith" unrecorded side agreements. Although the legislative history specifically discussing the new provision is sparse, it is clear that the provision was intended to supplement the *D'Oench* doctrine by providing the FDIC with additional assurance that it could rely on bank records.

The issue apparently was first brought to Congress's attention by Representative Frances E. Walter, a ranking member of the House Judiciary Committee. One of Rep. Walter's constituents, Mr. Alker, had lost a case against the FDIC on the ground that he was estopped from asserting certain oral agreements under *D'Oench*, even though he claimed that he had not "lent himself" to any deceptive scheme or arrangement.[13] Rep. Walter introduced a bill that, in addition to amending certain provisions of the criminal code, would have made the FDIC subject to any defense to a note that a debtor could have raised against the insured bank to whom the note was made (except in cases of actual fraud) (H.R. 5811, 81st Cong., 1st Sess. (1949)). The bill made this protection of debtors (the opposite of what was eventually enacted) retroactive to 1933 and, hence, to Mr. Alker's case.[14]

Hearings on the bill were held on August 10, 1949, and on June 12, 1950. *Hearings on H.R. 5811, Before the House Comm. on the Judiciary*, 81st Cong., 1st & 2d Sess. (1949 & 1950) (unpublished) [here-

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[13] See *FDIC* v. *Alker*, 151 F.2d 907 (3d Cir. 1945), cert. denied, 327 U.S. 799 (1946). Mr. Alker was persistent in his efforts to reverse his loss. His litigation, which ultimately involved 6 petitions for certiorari and 16 petitions for rehearing to this Court as well as 7 appearances before the court of appeals (excluding rehearing petitions), did not come to an end until 1964 (377 U.S. 920).

[14] Rep. Walter also introduced H.R. 1949, 81st Cong., 1st Sess. (1949), which included the same debtor protection as H.R. 5811 but was referred to the Committee on Banking and Currency rather than the Committee on the Judiciary. A similar bill (S. 949, 81st Cong., 1st Sess. (1949)) was introduced in the Senate.

inafter *H.R. 5811 Hearings*]. The FDIC opposed the bill (*id.* at 60) because it "would encourage secret agreements between a bank and its debtors, which conceivably might be short of actual fraud, to the detriment not only of [the FDIC], but also of general creditors and uninsured depositors" (*id.* at 68) (remarks of Norris Bakke, Associate General Counsel, FDIC). The FDIC explained that insured banks

> are examined by governmental authorities which in turn publish reports and statistics concerning their condition. All of such reports are intended to be and are relied upon by the public generally. This reliance of necessity is based upon what records of the bank disclose and the public invests or deposits its money accordingly. Even the most fundamental principles of honesty, aside from any technical rules governing distribution of property of an insolvent bank, require that these creditors be protected against any arrangements, understandings, or agreements which are not disclosed in the records of the bank and, therefore, would not be reflected in these reports.

Id. at 209 (statement of John Cecil, Counsel, FDIC). Evidently, all other relevant government agencies also opposed the bill (*id.* at 207 (noting opposition of Departments of Justice and Treasury, Federal Reserve Board, Nat'l Ass'n of Supervisors of State Banks)).

Various witnesses and members of the Committee repeatedly expressed similar concerns about the bill and stressed the importance of the FDIC's ability to rely on the written records of the bank as well as the minimal burden a writing requirement would have on banks and their customers. See, *e.g.*, *H.R.*

5811 Hearings 51 ("the insurer, the Federal Deposit people, must rely on what the file shows") (remarks of Rep. Michener); *id.* at 54 ("Do you think that it serves a useful public purpose and facilitates in the bank examiners performing their duties to have a note * * * subject to an agreement that is not in writing?") (remarks of Rep. McCulloch); *id.* at 125 ("What would be wrong with the further inclusion in the bill of the requirement that any agreement entered into be substantially placed on the face of the note by addenda or by other means, so that an examiner, when he hits the bank, sees what is there * * *?") (remarks of Rep. Wilson); *id.* at 156 (testimony that it would not be an "undue burden" if "the law required any extension or any deviation from the exact language on the face of that note to be in writing and attached to it"); *id.* at 177 (same). One bank president testified (*id.* at 189) (remarks of John Kirk):

> [T]he bank examiner is a representative of the public, and he has a right to rely on [the note], and I do not care whether he is an examiner for the F.D.I.C., whether he is an examiner for the Comptroller's Office, or whether he is an examiner for one of the State Departments, I do not care who he is representing, he is still representing the American public and he has a right to know that within the four corners of that note that is all there is, that there is no more.

Rep. Walter's bill never left the Judiciary Committee.

On June 20, 1950, one week after the second of the *H.R. 5811 Hearings*, the House Banking and Currency Committee held hearings on S. 2822, 81st

Cong., 2d Sess., which was to become the FDI Act. Although S. 2822 as introduced contained no provision concerning the protection of the FDIC against unrecorded agreements, Rep. Multer, referring to the recent Judiciary Committee hearings, raised the issue in a question to FDIC Director Cook:

> Mr. Multer. There has been considerable litigation through the years during the existence of the Corporation in which contentions have been made that agreements between the banks and debtors have not been lived up to after the banks were closed down and that the FDIC, in collecting the assets of the bank, was put in a more favorable position than the bank itself would have been and that the FDIC could ignore the agreements with the debtors. I think some legislation has been introduced in a hearing held before another committee of the House on the subject. Can you tell us briefly whether or not there is any objection to putting into this proposed law an amendment to require the FDIC to comply with any such agreements that have been made in good faith and which are properly recorded between the debtors and the banks closed up, or taken over, or merged?
>
> Mr. Cook. I think that statement of yours covered the ground entirely—where you are properly supported by such agreements and not dependent upon oral agreements that have no binding effect. *If the bars are once let down on that, there would not be a safe bank in the United States today, because anybody could claim that so-and-so had happened and there would be no evidence to support it.* * * *
>
> Mr. Multer. I think the policy of your bank is to honor any such bona fide agreement.

> Mr. Cook. We never back away from a bona fide agreement, and when the record is clear we inherit that obligation and stand by it. *We cannot be bound when there is no record.*

Amendments to The Federal Deposit Insurance Act, 1950: Hearings on S. 2822, Before the House Comm. on Banking and Currency, 81st Cong., 2d Sess. 41-42 (1950) (emphasis added) [hereinafter *Hearings on S. 2822*].

The bill that the Banking Committee reported to the House contained the provision that has become Section 1823(e). 96 Cong. Rec. 10671 (1950). The provision went beyond the ideas expressed in the Judiciary Committee hearings by opponents of Rep. Walter's bill and required more than merely a writing to support variations from the text of written obligations; it also required that such a side agreement be executed by the bank and the debtor simultaneously with the execution of the note, that it have been *continuously* an official record of the bank, and that official minutes show that it was approved by the bank's board of directors or loan committee. With one minor change in language (see *id.* at 10731-10732 (changing "simultaneously" to "contemporaneously" in the second requirement)), the Committee provision became law without further discussion in Congress.

The law thus enacted, whose language has not been changed, strikes a careful balance between debtor protection and protection of depositors nationwide (through protection of the FDIC). On the one hand, it precisely delineates the means by which debtors can protect themselves; on the other hand, it enables the FDIC to rely on the bank's records when assessing the true condition of FDIC-insured banks. This strengthening of the FDIC's examination authority

complemented the broadening of that authority that was one of the most important features of the 1950 Act. See *Hearings on S. 2822*, at 31 (remarks of FDIC Director Cook); H.R. Rep. 2564, 81st Cong., 2d Sess. 5 (1950); H.R. Conf. Rep. 3049, 81st Cong., 2d Sess. 3-4 (1950); 96 Cong. Rec. 10652, 10653, 10656, 10659, 10662, 10729, 10731 (1950).

D. Section 1823(e) Bars Petitioners' Reliance On Any Unwritten Representations To Vary The Terms Of Their Written Obligation To The Detriment Of The FDIC

The legislative history, the federal common law principles established by this Court in *D'Oench*, and the basic functions of the FDIC all demonstrate the overriding importance of the integrity of bank records. Section 1823(e) must be construed so that bank examiners (as well as creditors and the general public) may rely on them—and need not make inquiries outside the bank's records—in assessing the bank's strength and the prudence of its lending practices. Under Section 1823(e), all representations and promises and understandings that a debtor relies on in entering into a loan transaction, insofar as the debtor may seek to invoke them against the FDIC, must be put in writing and be available in bank records at all times to bank examiners and the public.

1. The broad purposes of Section 1823(e) require that it be construed to bar use of unrecorded side understandings to support an allegation of fraud in the inducement, just as it bars direct use of such understandings to defeat the FDIC's recovery on a note. Petitioners effectively concede this in urging the Court (Pet. Br. 7-14) to adopt a distinction between claims of fraudulent inducement based on

promissory misrepresentations and those based on factual misrepresentations. Like petitioners, the courts of appeals that have drawn this distinction recognize that, when an unwritten side "agreement" is present, Section 1823(e) not only bars proving the validity of the side agreement but also bars its use to prove fraud in the written agreement. See *FDIC* v. *Hatmaker*, 756 F.2d at 37-38; *Gunter* v. *Hutcheson*, 674 F.2d at 867.

Section 1823(e) declares that agreements that fail to meet its requirements are not "valid against the [FDIC]" in any fashion, not merely that they are deprived of separate contractual force. The statute's purposes clearly make irrelevant the actual subjective intent of the parties to the loan transaction. As we have explained, the statute is designed to enable the FDIC to rely on the records of insured banks, to enable FDIC examiners to "confine their scrutiny to documents found in the bank's official records" (*FDIC* v. *O'Neil*, 809 F.2d at 350). Even the *Gunter* court, in affording the FDIC protection under federal common law (674 F.2d at 865, 869), recognized the vital importance of the FDIC's ability to treat assets as they appear on the books, especially when called upon to make speedy decisions about how to deal with a failed bank. This statutory objective, as well as the incentive the statute gives to debtors to insist that all terms material to a loan properly appear in bank records, would be undermined if any use against the FDIC of an off-the-books agreement, including use to establish fraud, were permitted. As the court of appeals stated in *FDIC* v. *Lattimore Land Corp.*, 656 F.2d 139, 146 n.13 (5th Cir. 1981) "[i]f an obligor may successfully void a note and recoup damages against the FDIC based on a claim of fraudulent

inducement from an unwritten agreement, he will have made an end run around § 1823(e)."

2. The heart of petitioners' effort to narrow the scope of Section 1823(e) is their suggestion (Pet. Br. 7-14), following *Gunter* v. *Hutcheson*, *supra*, and *FDIC* v. *Hatmaker*, *supra*, that factual representations are not "agreements" under Section 1823(e) although promises are. Petitioners are unable to cite a single decision that has turned on the distinction they urge. *Hatmaker* made such a distinction in dicta: the case involved only promissory representations (which the court found covered by Section 1823 (e) and unavailable as a basis for a claim of fraud) (see 756 F.2d at 37-38). Similarly, *Gunter* held the FDIC protected by federal common law against an asserted defense to the written obligation at issue (674 F.2d at 868-874), so its decision on Section 1823(e) was unnecessary to its holding. In any event, petitioners' proposed distinction should be rejected.

The natural legal understanding of the language of Section 1823(e) affords no basis for a distinction, among all the statements that form the basis for a bargain about a banking transaction, between those which are promissory in form and those which are assertions of fact. Both are warranties, as commercial law has long recognized (see Uniform Sales Act § 12, 1 U.L.A. 1 (1950) ("[a]ny affirmation of fact or any promise"); pages 13-14, *supra*), and hence both are agreements. See E. Farnsworth & J. Honnold, *Cases and Materials on Commercial Law* 529 (3d ed. 1976) ("a distinction between representations and promises * * * in a contractual setting is inherently difficult"). To the extent factual or promissory representations are relied on by the debtor, there is no relevant difference in the debtor's

mind at the time of the transaction or later: in either case, the debtor understands his written obligations to be qualified, takes the same steps in reliance, suffers the same injury upon breach or falsity, and seeks the same relief.

Further, virtually every factual representation made in connection with a loan transaction could just as easily have been cast in the more explicitly promissory terms of an express warranty. Thus, Planters' purported "factual fraud"—based on Caughfield's alleged misrepresentation of the farm's acreage and mineral rights—might well have taken the form of a statement, "I assure you that the acreage is * * *." Indeed, as a practical matter, a factual representation later relied on to attack the validity of a written loan obligation is very likely to be part of a broader side agreement, with promises and factual warranties inextricably interwoven.[15]

Central to interpreting Section 1823(e), any distinction between those relied-upon representations which are promissory and those which are factual would be flatly inconsistent with the statute's pur-

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[15] In *Gunter* itself, the debtors had an intricate, multi-termed undisclosed agreement with the bank that directly contradicted the unconditional nature of their note (674 F.2d at 866 n.5). The Eleventh Circuit has relied on that fact in apparently limiting the scope of *Gunter*'s discussion of Section 1823(e). Characterizing the *Gunter* ruling on Section 1823(e) as a "narrow" one, the court in *FDIC* v. *Merchants Naitonal Bank* (725 F.2d at 639 (emphasis omitted)) described the ruling as applying only where "the parties contend that * * * an asset is invalid and that such invalidity is caused by acts independent of any understanding or side agreement." Under that interpretation, if the invalidity is caused by acts that are part of a hidden understanding or agreement, Section 1823(e) applies. The representations at issue here were concededly part of such a side agreement.

poses and its role in the successful functioning of the FDIC. Any unrecorded representations, if alleged to vary the terms of written obligations, would create for the FDIC precisely the problems that Section 1823(e) seeks to eliminate. The stated value of a bank's loan portfolio is undermined whenever *any* material terms underlying the transaction are withheld, and drawing petitioners' proposed distinction would render the FDIC unable to rely on bank records in evaluating bank assets. Petitioners' distinction would greatly impair the incentive the statute provides debtors to insist that all material understandings be put in writing according to the precisely specified disclosure requirements. Petitioners' proposed distinction would accordingly undermine the FDIC's ability to carry out bank examinations as well as its ability to decide, in necessarily expeditious fashion, how to deal with a failed bank. Ultimately, petitioners' suggestion is simply inconsistent with the core statutory policy of protecting the nationwide insurance fund.[16]

3. Contrary to petitioners' apparent suggestion (Pet. Br. 4-5), the FDIC's knowledge of petitioners' defenses prior to the purchase and assumption of the failed bank is irrelevant under Section 1823(e). There is no language in the statute that makes the

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[16] The *Gunter* court recognized these threats to federal policy but did so under the guise of federal common law because it thought the language of Section 1823(e) insufficiently broad to encompass factual misrepresentations (674 F.2d at 867-874). As we have noted, the *Gunter* court took an unnecessarily narrow view of the statutory language. In any event, we agree with the *Gunter* court that federal common law must accord the FDIC the protection we urge if Section 1823(e) is found unsuited to the task (see pages 41-46, *infra*).

FDIC's knowledge a cure for an otherwise invalid agreement. The statute requires that a side agreement be in writing, not simply that it be communicated to the FDIC (by telegram, for example, immediately prior to a bank failure). The statute also requires that such an agreement be made contemporaneously with the creation of the asset involved and be reflected continuously on the bank's records from the time it is made. The provision thus specifically excludes the possibility of the sort of after-the-fact cures that petitioners apparently have in mind. These requirements are intended to ensure that bank regulators are able to learn immediately of any agreement that would diminish the value of a bank loan, making it possible for the FDIC to detect and to address problems before a bank has failed and to minimize last-minute surprises when making the necessarily expedited decisions concerning how to deal with a bank when it does fail. Not surprisingly, no court has held that Section 1823(e) is subject to an "actual knowledge" exception. See *FDIC* v. *O'Neil*, *supra*; *FDIC* v. *Merchants National Bank*, *supra*; *FDIC* v. *de Jesus Velez*, 678 F.2d 371 (1st Cir. 1982); but cf. *FDIC* v. *Armstrong*, 784 F.2d 741 (6th Cir. 1986) (rejecting claim of fraudulent inducement where FDIC was without actual knowledge of the claim and, hence, a holder in due course).

4. Aside from *Gunter's* (unnecessary) ruling and the dictum in *Hatmaker*, the lower court decisions strongly support the broad, objective interpretation of Section 1823(e) we are urging. The decisions recognize the breadth of Section 1823(e)'s coverage, the strictness of its requirements, and the policies it is designed to serve; and they have protected the FDIC against a wide variety of defenses based on

undisclosed side agreements. See, *e.g.*, *FDIC* v. *O'Neil*, 809 F.2d at 353 (Section 1823(e) bars debtor's reliance on an unexecuted side agreement that was referred to in the note; the FDIC's "appraisers can confine their scrutiny to documents found in the bank's official records"); *FDIC* v. *Castle*, 781 F.2d 1101, 1107 (5th Cir. 1986) (Section 1823(e) bars defense to guarantee left blank and filled in erroneously by bank; rejecting claim "that the alleged oral agreement takes precedence over the documents reflected in the [failed bank's] records"); *FDIC* v. *Merchants National Bank*, 725 F.2d at 639 (the "FDIC may rely on the books and records of [the failed bank] to establish" the extent of a guarantor's obligation). See also *FDIC* v. *Hatmaker*, *supra*; *FDIC* v. *Gardner*, 606 F. Supp. 1484 (S.D. Miss. 1985); *FDIC* v. *Powers*, 576 F. Supp. 1167 (N.D. Ill. 1983), aff'd, 753 F.2d 1076 (7th Cir. 1984).[17] The terms of the side understandings vary

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[17] In addition, see *Public Loan Co.* v. *FDIC*, 803 F.2d 82 (3d Cir. 1986) (Section 1823(e) bars defenses based on oral accord and satisfaction); *FDIC* v. *Fonseca*, 795 F.2d 1102 (1st Cir. 1986) (Section 1823(e) bars claim that debtor's obligation was conditioned on third party's payment of one of debtor's notes); *FDIC* v. *de Jesus Velez*, 678 F.2d 371 (1st Cir. 1982) (Section 1823(e) bars defenses based on written agreement withheld from bank records); *Chatham Ventures, Inc.* v. *FDIC*, 651 F.2d 355 (5th Cir. 1981), cert. denied, 456 U.S. 972 (1982) (Section 1823(e) bars defenses based on an oral joint venture agreement); *FDIC* v. *Hoover-Morris Enterprises*, 642 F.2d 785 (5th Cir. 1981) (Section 1823(e) bars claims that debtors had no personal liability under the notes); *Black* v. *FDIC*, 640 F.2d 699, 701 (5th Cir.), cert. denied, 454 U.S. 838 (1981) (Section 1823(e) bars defenses based on oral understanding and "custom of the lending trade" concerning obligation to make further financing); *FDIC* v. *Waldron*, 630 F.2d 239 (4th Cir. 1980) (Section 1823(e) bars defense based

from case to case, but all of the debtors and bank customers involved in those cases were attempting to do exactly what petitioners are trying to do in this case—use a concealed understanding to defeat or to diminish the FDIC's collection on a note. Section 1823(e) should be construed to protect the FDIC against all such understandings.[18]

II. Even If Section 1823(e) Does Not Bar Petitioners' Defense To Their Written Obligation, Federal Common Law Precludes Petitioners From Asserting The Defense

If the Court agrees with our reading of Section 1823(e), it need not consider whether federal common law precludes petitioners from seeking to invalidate their written loan obligation. Even if, however, the Court concludes that Section 1823(e) does not bar petitioners' defense, the judgment of the court of appeals should be affirmed on the alternative ground that the defense is precluded under federal common law. Section 1823(e) does not end the inquiry into what defenses may be asserted against the FDIC; and both precedent and proper analysis require refusal to recognize petitioners' defense.

A. Federal Common Law May Refuse To Permit A Debtor's Defense To A Note Held By The FDIC Even If Section 1823(e) Does Not Bar The Defense

Congress has declared that all civil actions involving the FDIC, at least in its corporate capacity, arise under federal law. 12 U.S.C. 1819 Fourth. In addi-

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on oral agreement that guarantee only covered certain debts of primary obligor).

[18] Of course, this construction of Section 1823(e) affects only a debtor's claims and defenses against the FDIC. It does not affect petitioners' fraud claims against Landry and Caughfield in this case. See note 7, *supra*.

tion, "[t]his Court has consistently held that federal law governs questions involving the rights of the United States arising under nationwide federal programs" (*United States* v. *Kimbell Foods, Inc.*, 440 U.S. at 726). State law does not apply of its own force to this case. Rather, all questions of law concerning petitioners' liability to the FDIC on their note are questions of federal law. See *FDIC* v. *Philadelphia Gear Corp.*, slip op. 5; *D'Oench, Duhme & Co.* v. *FDIC*, 315 U.S. at 456; see also *United States* v. *Yazell*, 382 U.S. 341, 354 (1966).

It is not disputed that federal law makes the note enforceable in the first place. What is disputed is whether petitioners may assert their defense to the note. Contrary to petitioners' apparent assumption that their defense is available unless federal common law affirmatively eliminates it (Pet. Br. 15-18), the correct question is whether federal common law adopts the defense (because state law does not apply of its own force). Accordingly, when petitioners argue that the existence of Section 1823(e) means that "resort to federal common law is inappropriate" (Pet. Br. 19), not only are they wrong (because resort to federal common law is unavoidable), but they leave themselves without any source of law to supply the defense they wish to assert.[19] Contrary to petitioners' argument (Pet. Br. 15-18), Section 1823(e) cannot "pre-empt the field" of remedies (*Illinois* v. *City of Milwaukee*, 406 U.S. 91, 107 (1972)) and leave no role for federal common law.

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[19] An affirmative cause of action for a suit by petitioners against the FDIC would similarly have to be found in federal common law.

Section 1823(e) certainly is relevant to determining what defenses petitioners may assert against the FDIC. The statute specifically forbids the recognition of certain defenses. In forbidding those defenses, however, it does not simultaneously—and oddly—require the federal courts to recognize other defenses. The statute does not suggest that *all* defenses found in state law, no matter how contrary to the FDIC's interests, must be recognized; and it does not in any way designate which among the numerous possible defenses that may exist in state law are to be adopted.

More specifically, there is no basis whatever for believing that Congress intended to require the federal courts to recognize any particular defense asserted against the FDIC merely because the defense does not involve an agreement covered by Section 1823(e). This is especially clear if, as we are assuming for purposes of this analysis, Section 1823(e) is insufficiently broad in scope to protect the FDIC against all challenges to written obligations based on off-the-books understandings. There is no suggestion in the legislative history that Congress was trying to limit the FDIC's protection when it wrote and enacted Section 1823(e). Congress's only concern was to increase the FDIC's protection; there is no reason to believe that Congress intended simultaneously to deprive the FDIC of existing protections, including those of the 1942 *D'Oench* decision, which, as a matter of federal common law, had broadly refused to recognize defenses emanating from schemes or arrangements likely to mislead bank examiners. There is simply no evidence that Congress intended to overrule *D'Oench*, to limit the *D'Oench* principles, or to constrict the courts' continuing power to deal with

threats to the FDIC's ability to rely on bank records.[20]

The only courts that have addressed this issue expressly have reached the same conclusion. *FDIC* v. *McClanahan*, 795 F.2d 512, 514 n.1 (5th Cir. 1986); *FDIC* v. *Powers*, 576 F. Supp. 1167, 1171-1172 (N.D. Ill. 1983), aff'd, 753 F.2d 1076 (7th Cir. 1984). Moreover, the lower courts have uniformly recognized that Section 1823(e) does not deprive them of the authority, under *D'Oench* and federal common law generally, to determine what defenses to written obligations to allow debtors to assert against the FDIC in its corporate capacity. See, *e.g.*, *FDIC* v. *Investors Associates X., Ltd.*, 775 F.2d 152 (6th Cir. 1985); *FDIC* v. *de Jesus Velez*, 678 F.2d at 375-376; *Gunter* v. *Hutcheson*, *supra*; *FDIC* v. *Hoover-Morris Enterprises*, 642 F.2d 785 (5th Cir. 1981); see also *FDIC* v. *General Investments, Inc.*, 522 F. Supp. 1061, 1070 (E.D. Wis. 1981); *Dominguez* v. *FDIC*, 90 F.R.D. 595 (D.P.R. 1981); *FDIC* v. *Timbalier Towing Co.*, 497 F. Supp. 912 (N.D. Ohio 1980); *FDIC* v. *Vineyard*, 346 F. Supp. 489, 493 (N.D. Tex. 1972). The courts have also applied *D'Oench* to the FDIC in its receivership capacity, which is not covered by Section 1823(e). See,

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[20] Any such conclusion might well place the FDIC in a weaker position than its predecessors, the receivers of failed banks or the failed banks themselves before they failed. As the Court recognized in *D'Oench* (315 U.S. at 457-459), bank receivers have long been protected from deceptive schemes and arrangements. And banks have long had such protection. See *Mount Vernon Trust Co.* v. *Bergoff*, 272 N.Y. 192, 5 N.E.2d 196 (1936); *Rogers* v. *First State Bank*, 79 Colo. 84, 243 P. 637 (1926); see also *National Bank of North America* v. *Around the Clock Truck Service*, 58 Misc.2d 660, 296 N.Y.S.2d 606 (Sup. Ct. 1968); 7 C. Zollman, *supra*, § 4783, at 284 n.17.

e.g., *FDIC* v. *Van Laanen*, 769 F.2d 666 (10th Cir. 1985); *FDIC* v. *First National Finance Co.*, 587 F.2d 1009 (9th Cir. 1978). Indeed, many of these decisions preceded Congress's reenactment of the provision at issue here, without change, in 1982 (Pub. L. No. 97-320, § 113(m), 96 Stat. 1474). See *Merrill Lynch, Pierce, Fenner & Smith* v. *Curran*, 456 U.S. 353, 381-382 (1982).

The two decisions of this Court that petitioners rely on (Pet. Br. 15-18), *City of Milwaukee* v. *Illinois*, 451 U.S. 304 (1981), and *Mobil Oil Corp.* v. *Higginbotham*, 436 U.S. 618 (1978), do not suggest a contrary conclusion. The Court there held that the existence of certain statutory remedies prohibited the federal courts from adopting additional federal common law remedies; petitioners here argue the opposite—that the statute somehow authorizes the judicial creation of federal common law defenses that would not otherwise exist. Moreover, the common law rules rejected in *City of Milwaukee* and *Mobil Oil Corp.* would have displaced statutes that reflected Congress's "considered judgment" on the scope of available remedies (*Mobil Oil Corp.*, 436 U.S. at 625) and "occupied the field through the establishment of a comprehensive regulatory program supervised by an expert administrative agency" (*City of Milwaukee*, 451 U.S. at 317). A different and entirely unrelated statute is at issue here; and no comparable congressional judgment or displacement of agency authority or comprehensive remedial scheme is present.

In sum, the federal courts must, as a matter of federal common law, determine whether the federal common law rule entitling the FDIC to enforcement of petitioners' note should be overriden by a federal

common law rule permitting petitioners to assert their defense to the note.

B. Federal Common Law Precludes Petitioners' Defense To Their Note

Federal common law must refuse to permit petitioners to assert their defense to the note for two reasons. First, petitioners' claim falls under this Court's *D'Oench* decision. Second, the three-factor test of *United States* v. *Kimbell Foods, Inc.*, 440 U.S. at 728-729, precludes federal common law adoption of petitioners' defense: there is a strong need for a nationally uniform rule forbidding the enforcement of petitioners' side arrangement against the FDIC; adoption of petitioners' defense would "frustrate specific objectives of the federal program[]" (*id.* at 728); and refusing to allow petitioners' defense would not significantly interfere with local commercial practices.

1. *Petitioners' Defense Is Barred By The* D'Oench *Decision Because Petitioners Lent Themselves To An Undisclosed Arrangement That Was Likely To Mislead Bank Examiners*

This Court's *D'Oench* decision established that a debtor who lends himself to a scheme or arrangement that is likely to mislead bank examiners may not assert against the FDIC any part of the arrangement to diminish the value of his written loan obligation. As we have explained, the *D'Oench* decision has not been overridden by Section 1823(e). It therefore remains valid and binding precedent. Petitioners' defense to their note is barred by the doctrine it established.

Petitioners concede (Pet. Br. 12) that they entered into an unwritten side agreement with Planters. They admit (Pet. Br. 4) that their bargain with the

bank was premised on eight material representations directly relating to the loan transaction, some promissory, some factual, but not one of which petitioners disclosed when the loan was made (or for roughly three years thereafter). (They also admit (J.A. 113-114) to having paid questionable "fees" and "commissions" to bank officials for arranging the transaction.). Petitioners voluntarily "lent themselves" to this elaborate unrecorded arrangement; and pursuant to the arrangement, numerous representations, which petitioners concede go to the very heart of their loan transaction, were not embodied in and, in fact, contradicted the loan documents. This arrangement plainly would tend to mislead bank examiners. Petitioners are accordingly barred under *D'Oench* from now relying on portions of their arrangement to relieve them of their written obligations.

Petitioners' allegation that they were defrauded does not remove their claim from the coverage of the *D'Oench* doctrine. As the Sixth Circuit said in applying the *D'Oench* doctrine in similar circumstances (*FDIC* v. *Investors Associates X., Ltd.*, 775 F.2d at 156 (emphasis added)), "*D'Oench* estops the maker of a note from asserting *any* defense arising out of [a] fraudulent scheme, including representations made by another participant in the scheme." See also *FDIC* v. *Berr*, 643 F. Supp. 357 (D. Kan. 1986); *FDIC* v. *Timbalier Towing Co.*, 497 F. Supp. at 922; *British Columbia Investment Co.* v. *FDIC*, 420 F. Supp. 1217, 1224 (S.D. Cal. 1976). The principles on which *D'Oench* rests make a claim of co-participant fraud immaterial. The *D'Oench* doctrine is designed to protect the FDIC from any scheme or arrangement that would tend to mislead bank examiners; and the threat to the FDIC, and hence to the nationwide system of deposit insurance, exists

regardless of whether the bank has deceived only the examiners or the debtor as well. Fraud by the bank does not alter the fact of knowing participation in a misleading arrangement, and that fact was sufficient in *D'Oench* (315 U.S. at 460-461). The lower courts have consistently recognized the prophylactic nature of the *D'Oench* doctrine (see, *e.g.*, *FDIC* v. *Investors Associates X., Ltd.*, *supra*; *FDIC* v. *Van Laanen*, *supra*; *FDIC* v. *de Jesus Velez*, 678 F.2d at 375; *FDIC* v. *First National Finance Co.*, 587 F.2d 1009 (9th Cir. 1978)), and petitioners could have easily and fully protected their legitimate interests by taking the simple step of insisting that all terms material to their loan be placed in writing. See *Chatham Ventures, Inc.* v. *FDIC*, 651 F.2d 355, 363 n.16 (5th Cir. 1981), cert. denied, 456 U.S. 972 (1982).

Finally, application of the *D'Oench* doctrine to petitioners' case is fully in accord with the equitable principles on which *D'Oench* rests. When a bank fails and the FDIC uses money from the insurance fund to purchase a note and then attempts to collect on the note, the principles embodied in *D'Oench* (and in Section 1823(e)) make clear that the loss should fall, not on the nationwide insurance fund (and hence on innocent depositors across the nation), but on the individual who lent himself to the secret arrangement.[21] 1A A. Corbin, *Contracts* § 197, at 203 (1963) ("Whether there has been fraudulent intent or not, it would be scandalous not to enforce payment of the note, if otherwise any depositor or other creditor would be the loser."). This result sensibly imposes

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[21] The maker of the note may be able to recover under state law from those who allegedly defrauded him. As between himself and the FDIC, however, the responsibility is his.

the costs on the party who was in a position readily to avoid the difficulty by insisting at the outset that all terms material to the loan transaction appear fully in the bank's records. Cf. U.C.C. § 3-115 at comment 5 ("The loss should fall upon the party whose conduct in signing blank paper has made the fraud possible * * *."); *FDIC* v. *Investors Associates X., Ltd.*, 775 F.2d at 155 n.4. As this Court said in *Dietrick* v. *Greaney* (309 U.S. at 196), "[i]t is a principle of the widest application that equity will not permit one to rely on his own wrongful act, as against those affected by it but who have not participated in it, to support his own asserted legal title or to defeat a remedy which except for his misconduct would not be available."

2. *Federal Common Law Must Decline To Permit Petitioners' Defense In Order To Protect The Federal Deposit Insurance Program*

For many of the reasons we have discussed, consideration of the three factors identified in *United States* v. *Kimbell Foods, Inc.*, 440 U.S. at 728-729, demonstrates that federal common law must refuse to allow assertion against the FDIC of challenges to written loan obligations based on any part of a side arrangement not fully reflected in an insured bank's books.[22] First, there is a strong need for a uniform national bar on such challenges. The FDIC administers a single nationwide insurance fund, and harm to the fund in any part of the nation adversely affects depositors nationwide. Moreover, the burden on bank examiners would be great if, in trying to determine

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[22] We do not suggest that federal common law should adopt the precise requirements of Section 1823(e).

a bank's assets and liabilities, they had not only to look beyond the bank's books but also to become familiar with what defenses each particular state's law might allow a debtor to assert. The need for uniformity reflected in Congress's enactment of Section 1823(e) is just as great in the common law setting.

Second, as we have explained at length above, permitting defenses to written instruments acquired by the FDIC would impair the FDIC's ability to conduct bank examinations and to deal accurately and expeditiously with failed banks. Moreover, whatever their precise scope, both Section 1823(e) and the *D'Oench* doctrine clearly embody a policy, also reflected in other statutes (*e.g.*, 18 U.S.C. 1005, 1014), demanding that bank records be accurate and complete, so that bank examiners can rely on the written terms of assets held in the portfolios of FDIC-insured banks. This policy protects the FDIC against any arangement by which banks and other debtors hide the true value of bank assets by concealing material condition. Indeed, as the court recognized in *FDIC* v. that diminish their value. The need to be able to ascertain the true condition of a bank from the four corners of bank documents is strongest on the eve of a bank failure, but the FDIC also needs to be able to rely on bank records before a bank reaches desperate condition. Indeed, as the court recognized in *FDIC* v. *MM & S Partners* (626 F. Supp. at 687),

> D'Oench and § 1823(e) demonstrate that there is a policy in federal banking law to the effect that the FDIC should not be bound by anything outside a bank's loan documents when it purchases those documents. * * * Therefore, the policy supporting FDIC protection in collateral agreement situations applies equally to all situa-

> tions in which the maker's defense is based on something, representations or conduct, outside of the note itself.

Recognition of petitioners' defense would impair this policy and "frustrate specific objectives of the federal program[]" (*Kimbell Foods, Inc.*, 440 U.S. at 728).

Third, protecting the FDIC from any attempt by a debtor to challenge a written bank instrument on the basis of a side arrangement not fully reflected in bank records would not "disrupt commercial relationships predicated on state law" (*Kimbell Foods, Inc.*, 440 U.S. at 729 (footnote omitted)). It is standard and prudent banking practice to reduce all material conditions of a bank agreement to writing. This is especially the case with large secured loans such as petitioners'. Indeed, state law, probably universally, requires a writing for such secured transactions, including those involving mortgages. See, *e.g.*, 59 C.J.S. *Mortgages* §99, at 143 (1949) (footnote omitted) ("A binding and valid mortgage of real property must be in writing."); La. Civ. Code arts. 3342 *et seq.* (West 1952 & Supp. 1987) (mortgages); U.C.C. § 9-203 (security interests in personal property); La. Civ. Code arts. 3158, 3159 (West 1952 & Supp. 1987) (pledge). Accordingly, the requirements of federal law that control this case are basically supportive, rather than disruptive, of state interests.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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